

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

C. W. YOUNG COMPANY, a Corporation,
Plaintiff in Error,

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation,
Defendant in Error.

VOLUME I.
(Pages 1 to 288, Inclusive.)

Upon Writ of Error to the United States District Court of the
Territory of Alaska, Division Number One, at Juneau.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

H. L. FAULKNER, Esq., Juneau, Alaska,
Attorney for Plaintiff in Error.

WINN & OOGHE, Juneau, Alaska, and COONEY
& KELLEY, Los Angeles, California,
Attorneys for Defendant in Error.

In the District Court for the Territory of Alaska,
Division Number One, at Juneau.

No. 2013—A.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Plaintiff,

vs.

C. W. YOUNG COMPANY, a Corporation,
Defendant.

Complaint.

Plaintiff complains of the above-named defendant and for a first cause of action alleges:

I.

That the above-named plaintiff is now, and at all times hereinafter mentioned was, a corporation duly organized and existing under the laws of the State of California and qualified to do, and doing business, in the Territory of Alaska, and that during all the times hereinafter mentioned it complied with all of the laws, rules and regulations pertain-

ing to foreign corporations doing business in Alaska, and paid all of its tax license as is required by the statutes of the Territory of Alaska.

II.

That C. W. Young Company, the above-named defendant, is now, and at all times hereinafter mentioned has been, a corporation duly organized and existing under the laws of the Territory of Alaska with its head office at Juneau, Alaska, and doing business in said town and vicinity. [1*]

III.

That on or about the 14th day of February, A. D. 1917, the above-named plaintiff entered into a written contract with the above-named defendant, a copy of which said contract is hereto attached and marked Exhibit "A" and made a part of this complaint as fully as if the same was set forth herein. That both plaintiff and defendant herein acted upon and under the terms and conditions of said contract and in all respects ratified the same and carried out the terms and conditions thereof and acted thereunder from the said 14th day of February, 1917, up to and including the 31st day of August, 1918.

IV.

That under and by virtue of said contract and agreement, and during the years 1917 and 1918, this plaintiff sold and delivered to said defendant at its place of business in or near Juneau, Alaska, and at the special instance and request of the said

*Page-number appearing at foot of page of original certified Transcript of Record.

defendant, goods, wares and merchandise, amounting to the agreed and reasonable price of \$5619.34. That said goods, wares and merchandise consisted of refined oils, lubricating oils, greases and containers. That under said contract and agreement for the sale and delivery of said merchandise the said defendant was entitled to a commission of \$281.95 which was duly paid to said defendant, and out of the sale of the said \$5619.34 worth of merchandise made by the said defendant, the said defendant only paid to this plaintiff the sum of \$1599.22 and after deducting said amount from the goods, wares and merchandise so furnished to said defendant by this plaintiff and deducting said commission as above stated, it left a balance due and owing to this plaintiff from said defendant of \$3738.17, no part of which latter sum has been paid to this plaintiff by said defendant, although [2] demand has been made therefor, and said sum is long past due.

V.

That said sum of \$3738.17 became due and owing from said defendant to this plaintiff on the 10th day of September, 1918, and this plaintiff is entitled to interest thereon at the rate of eight per cent per annum from said last mentioned date.

And for a second cause of action against said defendant, this plaintiff alleges:

I.

That the above-named plaintiff is now, and at all times hereinafter mentioned was, a corporation duly organized and existing under the laws of the

State of California and qualified to do, and doing, business in the Territory of Alaska, and that during all the times hereinafter mentioned it complied with all the laws, rules and regulations pertaining to foreign corporations doing business in Alaska, and paid all of its tax license as is required by the statutes of the Territory of Alaska.

II.

That C. W. Young Company, the above-named defendant, is now, and at all times hereinafter mentioned has been, a corporation duly organized and existing under the laws of the Territory of Alaska with its head office at Juneau, Alaska, and doing business in said town and vicinity.

III.

That on or about the 5th day of October, 1918, this plaintiff sold and delivered to the defendant at its special instance and request, goods, wares and merchandise of the reasonable and agreed [3] worth and value of \$2578.31.

IV.

That said defendant has not paid to this plaintiff and portion or part of the said sum of \$2578.31 although the same has been long since past due and demand made for the payment thereof, and said sum is now due and owing from the defendant to this plaintiff, together with interest thereon at the rate of eight per cent per annum from the 10th day of November, 1918.

WHEREFORE plaintiff prays judgment against this defendant for the sum of Thirty-seven Hundred Thirty-eight and 17/100 (\$3738.17) Dol-

lars, together with interest thereon at the rate of eight per cent per annum from the 10th day of September, 1918, and also for the sum of Twenty-five Hundred Seventy-eight and 3/100 (\$2578.31) Dollars, with interest thereon at the rate of eight per cent per annum from the 10th day of November, 1918, together with the costs and disbursements of this action.

COONEY & KELLY,
JNO. R. WINN,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska,
Division Number One,—ss.

John R. Winn, being duly sworn, on oath deposes and says: I am one of the attorneys for the plaintiff in the above-entitled action; that I have read over and know the contents of the foregoing complaint, and verily believe the facts set forth therein are true. That I make this verification on the part and in behalf of the plaintiff corporation herein for the reason that at the present time there is no officer or agent of said corporation within the Territory of Alaska.

JNO. R. WINN.

Subscribed and sworn to before me this 8th day of October, 1920.

[Notarial Seal] ARTHUR OOGHE,
Notary Public for the Territory of Alaska, Residing at Juneau.

My commission expires April 8, 1923. [4]

Exhibit "A."**MEMORANDUM OF AGREEMENT**

THIS AGREEMENT, made and entered into this 14th day of February, 1917, by the UNION OIL COMPANY OF CALIFORNIA, a corporation duly organized under the laws of the state of California, party of the first part, and (name) C. W. YOUNG COMPANY, of (Town) Juneau, (State) Alaska, party of the second part,

WITNESSETH:

(1) The first party hereby appoints the second party as its agent for the sale of its products as follows: (Insert list of products to be sold.)

Gasoline,
Kerosene,
Distillate,
Lubricating oils,
Lubricating Greases.

(2) In the following described territory, Juneau, Alaska.

(3) It is mutually understood and agreed by the parties hereto that the second party's authority so far as the first party is concerned is strictly limited to the terms and conditions set forth and made a part of this contract.

DELIVERIES.

(4) The first party agrees to deliver the above described products to the second party f. o. b. Juneau, Alaska, same to be in tank cars, iron barrels, drums, cases or packages, and for the ordinary

requirements of the territory referred to in Clause 2.

SALES.

(5) It is understood and agreed by the parties hereto that all sales made by the second party shall be for cash on delivery, and in accordance with the written prices furnished by the first party. No deliveries are to be made on credit to be carried by the party of the first part without written authority from the first party.

REPORTS.

(6) The second party further agrees to render such reports of the business transacted under this contract as may be required by the first party. [5]

EQUIPMENT.

(8) It is understood and agreed that the second party will make all retail deliveries and that all shipments made by the first party to said second party, are to be promptly and properly accounted for by said second party, and that any loss in excess of 2% which may occur by leakage or otherwise after delivery by first party as herein specified, shall be paid for by the second party within ten (10) days after the close of each month's business.

(9) It is understood and agreed that the said second party shall furnish at his expense, such storage facilities as may be satisfactory to first party and necessary to the proper handling and care of such goods as are shipped to said second party under this contract.

(10) It is further understood and agreed by the parties hereto that the second party will not be entitled to nor receive any compensation covering shipments which may be made from time to time in carload lots to such trade as the first party may have at this time, or in the future acquire, within the territory referred to in the above. The said second party shall receive compensation only on such carload business as he secures directly through his own efforts, and on such carload shipments accepted by the first party for delivery to customers within the territory referred to, second party shall receive as his full compensation ——— per gallon.

(11) On deliveries made direct by the said second party within the territory as above described his compensation shall be as follows:

IN TOWN		OUT OF TOWN	
Gasoline	One ¢ per gal.	Gasoline	One ¢ per gal.
Kerosene	One ¢ “ “	Kerosene	One ¢ “ “
Distillate	One ¢ “ “	Distillate	One ¢ “ “
Lubricating Oils	Two ¢ “ “	Lubricating	Two ¢ “ “
Greases	½ ¢ per lb.	Grease	½ ¢ per lb.

PAYMENT OF COMMISSIONS.

(12) All commissions earned by the second party shall be paid by the first party not later than the tenth (10th) day of the month following:

(13) This agreement may be cancelled by either party upon fifteen (15) days notice in writing, otherwise to continue in full force and effect for one (1) year from date.

(14) In consideration of the above, the second party agrees to furnish said first party a satisfactory bond for the faithful performance of this

contract, and said bond is attached hereto and made a part hereof.

Accepted: C. W. YOUNG CO.,
By J. C. McBRIDE,
President.

Accepted: UNION OIL COMPANY OF
CALIFORNIA.

Witness:

E. A. NAUD.

Filed in the District Court, District of Alaska,
First Division. Oct. 9, 1920. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [6]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2013—A.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Plaintiff,

vs.

C. W. YOUNG COMPANY, a Corporation,
Defendant.

Third Amended Answer.

Comes now the defendant above named, and leave of Court being first had, files this, its third amended answer to the plaintiff's complaint, and admits, denies, and alleges as follows:

FIRST CAUSE OF ACTION.

I.

Defendants admit the allegations contained in paragraphs I and II of said first cause of action.

II.

Referring to the allegations contained in paragraph III of said first cause of action, defendant admits that plaintiff and defendant entered into the contract therein mentioned, but denies that plaintiff performed its obligations under the contract, and denied that plaintiff carried out the terms and conditions thereon as therein alleged.

III.

Referring to the allegations contained in paragraph IV of said first cause of action, defendant admits that plaintiff delivered to it goods, wares and merchandise, denies that the value of same was Five Thousand Six Hundred Nineteen Dollars and Thirty-four Cents (\$5,619.34); and admits that the same consisted of refined oils, [7] lubricating oils, greases and containers; admits that defendant paid to plaintiff the sum of One Thousand Five Hundred Ninety-nine Dollars and Twenty-two Cents (\$1599.22), denies that there was a balance of Three Thousand Seven Hundred Thirty-eight Dollars and Seventeen Cents (\$3,738.17) due the plaintiff from defendant, and denies that there was or is any sum whatever due the plaintiff from the defendant.

IV.

Referring to the allegations contained in paragraph V of the said first cause of action, defendant denies each and every allegation therein contained.

SECOND CAUSE OF ACTION.

I.

Referring to the allegations contained in paragraphs I and II of said second cause of action, defendant admits that on October 5th, 1918, plaintiff delivered to the defendant certain goods, wares and merchandise and denies that the same were worth Two Thousand Five Hundred Seventy-eight Dollars and Thirty-one Cents (\$2,578.31).

II.

Referring to the allegations contained in paragraph IV of said second cause of action, defendants admit that it has not paid plaintiff any portion of the sum of Two Thousand Five Hundred Seventy-eight Dollars and Thirty-one Cents (\$2,578.31), and denies that it owes plaintiff said sum, or any other sum whatsoever.

And for a further and affirmative defense, and by way of cross-complaint and counterclaim, defendant alleges:

FIRST AFFIRMATIVE DEFENSE.

I.

That defendant is a corporation organized and existing under and by virtue of the laws of the Territory of Alaska, and authorized to [8] do business, and doing business at all times mentioned herein in the Territory of Alaska, and has paid its annual corporation license tax as required by law.

II.

That on or about the 14th day of February, 1917, the plaintiff and defendant entered into the con-

tract mentioned in the complaint herein, and attached to said complaint and marked Exhibit "A" and reference is hereby made to said contract and Exhibit "A" for the purposes of this answer.

III.

That under the terms of said contract set forth in Exhibit "A" above mentioned the defendant agreed to furnish storage facilities necessary for the proper handling of the oils and merchandise mentioned in said contract and which said storage facilities should be satisfactory to the plaintiff and the plaintiff under the terms of said contract agreed to supply the defendant with gasoline, kerosene, distillate, lubricating oils and lubricating greases sufficient to supply the ordinary requirements of the Territory described in paragraph 2 and 4 of said contract as Juneau, Alaska, and to keep the defendant supplied at all times during the term mentioned in said contract with sufficient oils and greases, etc., as above mentioned to supply the requirements of said territory.

IV.

That defendant fully performed its part of said contract and that pursuant to the terms of said contract and to the agreement between plaintiff and defendant therein, defendant furnished the necessary facilities for handling said oils and greases herein mentioned as set forth in paragraph 9 of said contract and which were satisfactory to the plaintiff; and that said facilities were procured and supplied [9] at a cost to the defendant of \$15,425.91 and that defendant maintained the same during the life of said contract and agreement at

an expense of \$3,969.48, making a total cost of the said storage facilities and their maintenance of \$19,395.39.

V.

That by virtue of said contract between plaintiff and defendant the plaintiff promised to pay defendant certain commissions upon the sale of said gasoline, kerosene, distillate, lubricating oils and lubricating greases, etc., as set forth in said contract and the same was to be paid as a consideration for defendant's furnishing said storage facilities above mentioned and handling and selling said commodities mentioned in said contract and that under the terms of said contract plaintiff undertook and agreed to furnish defendant with sufficient gasoline, kerosene, distillate, lubricating oils and lubricating greases to supply the ordinary requirements of the territory referred to in said contract as Juneau, Alaska.

VI.

That defendant, pursuant to the terms of said contract, procured sufficient orders in the ordinary course of business in the territory referred to in said contract and in the ordinary course of business in said territory and for the ordinary requirements of said territory to net it a commission upon said sales, under the terms of said contract, sufficient to reimburse the said defendant for all sums expended by it, in the furnishing and maintenance of the facilities for the sale of the said commodities; and in the course of said business and for the ordinary requirements of said territory referred to in said contract defendant procured

orders for the sale of said oils and greases mentioned in said contract to net it commissions, during the life of said contract and before the same was cancelled, of \$13,500.95. [10]

VII.

That in violation of the terms of said contract and contrary to plaintiff's agreement therein plaintiff failed to supply defendant with sufficient gasoline, kerosene, distillate, lubricating oils and lubricating greases as mentioned in said contract to supply the ordinary requirements of the territory referred to in said contract and failed to supply defendant with any of said oils and greases sufficient to net defendant any commission save and except the sum of \$3,819.09.

VIII.

That by reason of plaintiff's failure to perform its part of said contract in that it failed to supply said oils and greases to the defendant as above mentioned and as set forth in said contract, the defendant has been damaged in the sum of \$9,681.86.

IX.

That plaintiff has failed and refused to pay defendant said sum of \$9,681.86 or any part thereof and that the said sum is now due and owing from the plaintiff.

SECOND AFFIRMATIVE DEFENSE.

And for a further and second affirmative defense and by way of cross-complaint and counterclaim to plaintiff's complaint, defendant alleges, as follows:

I.

That defendant is a corporation organized under

the laws of Alaska and has paid its license taxes due the said Territory; and is and was at all times mentioned herein authorized to do, and doing business in said territory. [11]

II.

That in January, 1915, plaintiff and defendant entered into an oral contract by the terms of which defendant was to act as agent of the plaintiff for the sale of gasoline, distillate, coal oil, kerosene, lubricating oils and lubricating greases in the Territory of Alaska; and by the terms of said contract defendant agreed to furnish a dock and warehouse and storage facilities for the landing, storage and handling of said oils and greases and plaintiff agreed to furnish sufficient storage tanks for the storage of same at Juneau and to supply defendant at all times during the life of said contract with sufficient oils and greases, etc., above mentioned to satisfy and supply all the demands of all customers defendant could procure within the Territory of Alaska; and under the terms of said contract the same was to remain in full force and effect for 3 years or until cancelled by mutual consent or by either party's giving the other party 30 days' notice in writing of its intention to cancel the same. That said oral contract was made by and between J. C. McBride acting on behalf of defendant and George D. Clagett, District Sales Manager of the plaintiff and V. H. Kelly, district manager of plaintiff, and said contract was ratified by the acts of the plaintiff and by plaintiff's partial compliance with the terms of same.

III.

That under the terms of said contract plaintiff promised to pay defendant commissions of one cent (1¢) per gallon on all sales of gasoline, distillate, kerosene, etc., and two cents (2¢) per gallon on all sales of lubricating oils and one-half cent ($\frac{1}{2}$ ¢) per pound on all sales of lubricating greases made by defendant.

IV.

That pursuant to the terms of said contract defendant furnished said dock and warehouse and storage facilities at a cost of \$15,425.91, [12] and plaintiff for a time furnished defendant with said oils and greases above mentioned to be sold as provided in said contract.

V.

That defendant at all times performed its part of said contract and while the same was in force and during the years 1915 and 1916 procured orders for the sale of oils and greases above mentioned within the Territory agreed upon in said contract and pursuant to the terms of said contract, which would have netted defendant commissions in the sum of \$9681.86; and that plaintiff failed and refused to supply defendant with said oils and greases to fill its said orders or to net defendant any portion of said commissions above mentioned.

VI.

That by reason of plaintiff's failure to supply defendant with said oils and greases to fill its said orders and by reason of plaintiff's failure to perform its part of said contract in that it failed to supply said oils to the defendant the defendant

has been damaged in the sum of \$9681.86, no part of which has been paid by plaintiff.

VII.

That at the time the contract of February 14, 1917, mentioned in plaintiff's complaint, was entered into between plaintiff and defendant, the plaintiff acting through its agents, said Kelly and said Clagett and C. W. Ralph, manager of stations, promised defendant that it would adjust the differences between them which had arisen by reason of plaintiff's violation of the contract of 1915, and promised to pay defendant the amount due it under said contract.

VIII.

That although requested so to do plaintiff has failed and refused to pay defendant the said sum of \$9681.86 or any portion thereof [13] to defendant's damage in said sum.

WHEREFORE, defendant prays that plaintiff's complaint herein be dismissed and that it have and recover judgment against plaintiff in the sum of \$9681.86, together with its costs and disbursements herein.

H. L. FAULKNER,
Attorney for Defendant.

United States of America,
Territory of Alaska,—ss.

I, Walter De Long, being first duly sworn, depose and say: That I am agent and manager of the defendant, C. W. Young Company, a corporation, that I have read the foregoing answer and

know its contents and that the facts stated therein are true and correct as I verily believe.

WALTER DE LONG.

Subscribed and sworn to before me this 13th day of May, 1922.

H. L. FAULKNER,
Notary Public for Alaska.

My commission expires Nov. 14, 1922.

Service admitted May 13, 1922.

JNO. R. WINN,
Atty. for Plaintiff.

Filed in the District Court, District of Alaska, First Division. May 13, 1922. John H. Dunn, Clerk. By L. E. Spray, Deputy. [14]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 2013—A.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Plaintiff,

vs.

C. W. YOUNG COMPANY, a Corporation,
Defendant.

Reply.

Comes now the above-named plaintiff, and replying to the third amended answer herein, admits, alleges and states as follows, to wit:

I.

Referring to the first affirmative defence in the

third amended answer of the defendant, this plaintiff admits Paragraphs I and II of said affirmative defence.

II.

Referring to paragraph III of the first affirmative defence in the third amended answer of the defendant, this plaintiff denies that under such contract referred to therein, it agreed to supply defendant with gasoline, kerosene, distillate, lubricating oils and lubricating greases sufficient to supply the ordinary requirements of the Territory described in Paragraphs II and IV of said contract, and to keep the defendant supplied at all times through the times mentioned in said contract with sufficient oils and greases, etc, to supply the requirements of said Territory.

III.

Referring to Paragraph IV of the first affirmative defence in the third amended answer of the defendant, this plaintiff denies that the defendant fully or otherwise performed its part of the [15] contract referred to in said paragraph; that this plaintiff has no knowledge or information sufficient to form a belief as to whether or not the facilities referred to in said paragraph cost the sum of \$15,425.91 or any other amount whatsoever; that plaintiff has no knowledge or information sufficient to form a belief as to whether or not the defendant maintained such facilities during the life of said contract and agreement referred to in said paragraph at the expense of \$3,969.48 or any other amount whatsoever; also this plaintiff has no

knowledge or information sufficient to form a belief as to whether or not the total of said last two mentioned items amounted to the sum of \$19,395.39 or any other amount whatsoever, and therefore denies each and all of said allegations.

IV.

Referring to Paragraph V of the first affirmative defence in the third amended answer of the defendant, this plaintiff denies that the commission mentioned therein was to be paid as a consideration for the defendant furnishing the storage facilities mentioned in said paragraph or any storage facilities whatsoever; also this plaintiff denies that said commission was to be paid otherwise than in said contract provided, a copy of which is attached to and made a part of the complaint herein; also this plaintiff denies that any other agreement or arrangement was had between plaintiff and defendant except as enumerated and set forth in the complaint herein and the agreement thereto attached.

V.

Referring to Paragraph VI of the first affirmative defence in the third amended answer of the defendant, this plaintiff denies the same and each and every portion thereof and denies that the defendant procured orders for the sale of oils and greases mentioned in the contract attached to the complaint, or otherwise, to net the defendant during [16] the life of said contract or otherwise or before the same was cancelled, in the sum of \$13,500.95 or any other amount or amounts whatsoever.

VI.

Referring to Paragraph VII of the first affirmative defence in the third amended answer of the defendant, this plaintiff denies the same and each and every portion thereof and as to that portion of said paragraph wherein the defendant states that the plaintiff failed to supply the defendant with any oils or greases to net the defendant commission in the sum of \$3,819.09; this plaintiff has no knowledge or information sufficient to form a belief as to said allegation or as to what amount defendant realized as commission and therefore denies said allegation.

VII.

Referring to paragraph VIII of the first affirmative defence in the third amended answer of the defendant, this plaintiff denies the same and each and every portion thereof and denies that the defendant has been damaged in the sum of \$9,681.86 or any other amount or amounts whatsoever.

VIII.

Referring to Paragraph IX of the first affirmative defence in the third amended answer of the defendant, this plaintiff admits that it has failed and refuses to pay to the said defendant the sum of \$9,681.86 and denies that there is due from plaintiff to defendant the said sum of \$9,681.86 or any other amount or amounts whatsoever.

Referring to the second affirmative defence in the third amended answer of the defendant, this plaintiff admits, alleges and denies as follows, to wit:

I.

Plaintiff admits Paragraph I of second affirmative defence in the third amended answer of the defendant.

II.

Referring to Paragraph II of second affirmative defence in third amended answer of the defendant, this plaintiff denies the same and each and every allegation therein contained and denies that the said George D. Clagett mentioned in said paragraph as district sales manager of the plaintiff and V. H. Kelly mentioned in said paragraph as district manager of plaintiff, or either or both of them, had any authority or was authorized in any manner whatsoever to enter into the contract mentioned in said paragraph, or any other contract whatever and denies that any such contract or any other contract claimed to have been entered into by and between said last mentioned parties was ever ratified in any manner whatsoever by the plaintiff.

III.

Referring to Paragraph III of the second affirmative defence in the third amended answer of the defendant, this plaintiff denies the same and each and every portion thereof, except that the plaintiff agreed to pay defendant in the manner set up in the Complaint herein and not otherwise.

IV.

Referring to Paragraph IV of the second affirmative defence in the third amended answer of the defendant, this plaintiff admits that defendant was at all times to furnish dock and warehouse and

storage facilities for the handling of any products of said plaintiff but plaintiff has no knowledge or information to form a belief as to whether or not the same were furnished at a cost [18] of \$15,425.91 or any other amount whatsoever.

V.

Referring to Paragraph V of the second affirmative defence in the third amended answer of the defendant, the plaintiff denies the same and each and every portion thereof and denies that defendant was damaged in the sum of \$9,681.86 or any other amount or amounts whatsoever.

VI.

Referring to Paragraph VI of the second affirmative defence in the third amended answer of the defendant, this plaintiff denies the same and each and every portion thereof and denies that defendant was damaged in the sum of \$9,681.86 or any other amount or amounts whatsoever, but admits that plaintiff has not paid defendant said sum or any portion thereof.

VII.

Referring to Paragraph VII of the second affirmative defence in the third amended answer of the defendant, this plaintiff denies the same and each and every portion thereof and denies that the said Kelly referred to therein or the said Clagett or the said C. W. Ralph, or either or all of them, was authorized in any manner whatsoever by said plaintiff to act on its behalf in regard to any matters alleged in said paragraph VII or to adjust any differences between plaintiff and defendant,

or that there were any differences of any name, nature or kind at that time or at any time by reason of the facts mentioned in said Paragraph VII existed between plaintiff and defendant, or that any promise was made to pay defendant the amount mentioned in said paragraph or any other amount or amounts whatsoever. [19]

VIII.

Referring to Paragraph VIII of the second affirmative defence in the third amended answer of the defendant, this plaintiff admits that it has not paid to the defendant the said sum stated in said paragraph of \$9,681.86 or any other amount or amounts whatsoever by reason of the facts set forth in said last-mentioned paragraph, or that defendant has been damaged in said amount or any other amount or amounts whatsoever.

And for an affirmative defence to the matters and facts set forth in defendant's third amended answer, this plaintiff admits:

I.

That the said plaintiff and defendant were at all times mentioned in the pleadings herein, both corporations, duly organized and existing and in all respects qualified to do business in the District and Territory of Alaska.

II.

That any and all contracts which were ever entered into by and between plaintiff and defendant herein by and under the terms of which the said plaintiff was to furnish the said defendant any products of oils or greases was, by mutual agree-

ment cancelled, set aside and held for naught long prior to the time of the commencement of this action and the account existing between plaintiff and defendant by reason of any contractual relations existing between plaintiff and defendant and by reason of plaintiff furnishing defendant any oils or greases, was fully gone over and checked up and the amount due and owing from defendant to plaintiff was, with full knowledge of plaintiff and defendant agreed upon and adjusted and the amount agreed upon due from defendant to plaintiff was as is set forth in the prayer of the complaint of the plaintiff herein. [20]

WHEREFORE plaintiff prays for judgment against the defendant for the sum specified and set forth in the complaint herein.

JNO. R. WINN,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

I, John R. Winn, being first duly sworn on oath, deposes and says: That I am attorney for the plaintiff herein, have read over the foregoing reply, know the contents thereof and believe the same to be true.

The reason that this verification is made by affiant is that there is no officer, agent or representative of the plaintiff in the Territory of Alaska who is authorized or qualified to make this verification.

JNO. R. WINN.

Subscribed and sworn to before me this 6 day of September, 1922.

[Notary Seal] SIMON HELLENTHAL,
Notary Public for Alaska.

My commission expires Jan. 12, 1926.

I, John R. Winn, attorney for above-named plaintiff, hereby certify that the foregoing reply is a full, true and correct copy of the original reply in said case.

_____,
Attorney for Plaintiff.

The above copy of the reply received this 6th day of September, 1922, same being certified to by John R. Winn, Attorney for Plaintiff as being a full, true and correct copy of the original reply—service admitted.

_____,
Attorney for Defendant.

Filed in the District Court, District of Alaska, First Division. Sept. 6, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [21]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

Case No. 2013—A.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Plaintiff,

vs.

C. W. YOUNG COMPANY, a Corporation,
Defendant.

Verdict.

We, the jury duly empanelled and sworn to try the above-entitled case, find for the plaintiff and assess its recovery and damages in the sum of \$3,501.67—with interest from Sept. 10, 1918, and \$2,578.31 with interest from Nov. 10, 1918, together with costs.

E. M. POLLEY,
Foreman.

Filed in the District Court, District of Alaska, First Division. Jan. 25, 1923. John H. Dunn, Clerk. By _____, Deputy.

Entered Court Journal No. 8, page 51. [22]

In the District Court for Alaska, Division Number One, at Juneau.

No. 2013—A.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Plaintiff,

vs.

C. W. YOUNG COMPANY, a Corporation,
Defendants.

Judgment and Decree.

This case having been duly and regularly set for hearing on the 18th day of January, 1923, at the hour of 10 o'clock in the forenoon of said day and both

parties appearing, at said time and plaintiff herein, Union Oil Company of California, appearing by its attorneys Winn & Ooghe and L. C. Kelly, and the defendant C. W. Young Company, a corporation, appearing by its attorney H. L. Faulkner, and all answering ready for trial, the Court proceeded to empanel the Jury for the trial of said case; that said jury was duly empaneled and sworn to try said cause according to law and rules and practice of this Court and after introducing all the testimony and evidence on the part of plaintiff and all the testimony and evidence on the part of defendant, and each side having rested, and after argument of counsel to said jury and instruction of the Court given to the jury, the jury retired to consider their verdict herein in charge of sworn bailiffs as by law required and after due deliberation of said jury, the said jury returned in open court, and the parties being represented by their respective attorneys and after the roll-call of said jury, the said jury returned and delivered in open Court to said Clerk and Court thereof, the following verdict, to wit:

“We, the jury, duly empaneled and sworn to try the above-entitled [23] case find for the plaintiff and assess its recovery and damages in the sum of \$3501.67 with interest from Sept. 10, 1918, and \$2578.31 with interest from November 10, 1918, together with costs.

(Signed) E. M. POLLEY,
Foreman.”

which said respective amounts so found due from defendant to plaintiff with interest according to said verdict amounts to date to the sum of \$8173.57; that a motion for a new trial having been duly and regularly served and filed herein and argument made thereon and submitted to the Court and overruled and denied by an order duly made and entered herein; and it further appearing to the Court that an attachment was issued out of this Court in this cause and the U. S. Marshal for the First Judicial Division, Alaska, under said writ of attachment duly levied upon and took into his possession the following described property belonging to and owned by the defendant, to wit:

“1 White Auto Truck.

237 Kegs of Nails.

1 lot of Belting.

1 Hearse.

26 Caskets.

1 thirty-foot boat complete with 4 h. p. American engine, now lying in the warehouse of C. W. Young Co.”

and the Court being fully advised in the premises;

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff herein, Union Oil Company of California, a corporation, have and recover of and from the said defendant C. W. Young Company, a corporation, the sum of (\$8173.57) Eight Thousand One Hundred Seventy-three and 57/100 dollars, together with costs and disbursements to be taxed herein by the Clerk of the above court; and that the whole of said attached property of defendant above

stated be duly and regularly and according to law sold by the U. S. Marshal aforesaid or so much thereof as is necessary or sufficient to satisfy the full amount of this judgment, interest and costs as aforesaid; and that the remaining property, if [24] any, after satisfying said judgment, costs and interest aforesaid, be returned to the defendant herein; and let execution and special order of sale issue therefor and the Marshal make due and regular return thereon according to law.

It further appearing that the correct name and style of plaintiff corporation is "Union Oil Company of California," and that at different places in the proceedings in this case said plaintiff corporation has been incorrectly named and styled "Union Oil Company";

IT IS ORDERED that wherever said plaintiff corporation is named or styled in these proceedings as "Union Oil Company" that the same be changed or read as "Union Oil Company of California."

Done in open court this 1st day of February, 1923.

THOS. M. REED,
Judge.

O. K. as to form.

H. L. FAULKNER,
Atty. for Deft.

Entered Court Journal S, pages 75, 76. [25]

In the District Court for the Territory of Alaska,
Division Number One, at Juneau.

No. 2013—A.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Plaintiff,

vs.

C. W. YOUNG COMPANY, a Corporation,
Defendant.

Motion for a New Trial.

Comes now the defendant, C. W. Young Company, and moves the Court to set aside the verdict of the jury, found and filed herein on January 25, 1923, upon the following grounds, to wit:

I.

The Court erred in giving Instruction No. VIII to the jury, which said instruction is as follows:

“I further instruct you, however, that under the contract it is pleaded, the plaintiff was not required to keep on hand, at Juneau, Alaska, at all times, a sufficient supply of oils to meet all possible demands. The defendant, under the contract, was appointed the agent of the plaintiff for the sale of its oils and by-products, and the presumption is, under the general terms of the contract plead, that the defendant would notify the plaintiff of all orders or contracts for the sale of oil received by it and that deliveries would be made by plaintiff according to such notification.”

II.

The Court erred in giving Instruction No. IX to the jury, which said instruction is as follows:

“In considering the contract of 1915, you should take into consideration the testimony of the witnesses and the letter of the plaintiff Oil Company to the defendant, of the date of March 1, 1915, which is Defendant’s Exhibit ‘A’; and from the evidence and such letter, determine the exact nature of the contract entered into between the parties, bearing in mind, however, that if the contract says that the defendant was acting as agent of plaintiff for the sale of plaintiff’s oil, it was its duty, as such agent, to notify the plaintiff of all sales and prospective sales of oils for delivery to customers; and further, unless the contract specifically provided, in terms that the oils and compounds mentioned in the contract, should at all times be kept on hand at Juneau, Alaska, for such sales as defendant might make, the defendant [26] could not complain by reason of shortage in the amount of such oils at Juneau, except as to such oils as were not delivered to defendant after request or notification to plaintiff by defendant of such sales.”

III.

The Court erred in giving Instruction No. XIII to the jury, which said instruction is as follows:

“I instruct you that the defendant is seeking, in this cause of action, to recover damages for the loss of anticipated profits on sales of oils

made by it, and in considering such anticipated profits you should consider only such contracts or agreements as are reasonably certain of execution, and should not indulge in estimates of profits or speculations or conjectures of witnesses not based upon facts. The purpose of allowing damages in cases of this kind, is to compensate the party injured by the breach of contract, for any loss he may have sustained thereby, and such damages must be capable of being estimated with reasonable certainty. Therefore, in this instance, which is for damages for loss of anticipated profits, you should take into consideration only those contracts for sale of oils made by defendant which are certain and specific as to amount and as to the time of delivery, and which, under the proof, you are reasonably certain would have been consummated had the goods been delivered to defendant by plaintiff, as provided by the contract, but failed because of non-delivery as required thereby. Mere expectations, doubtful offers or vague or indefinite assurances of intention to purchase, without the expression of quantity or value, and opinions as to what sales could or probably would have been made but for the alleged breach of the contract by plaintiff all fall within the category of speculative, uncertain and remote profits and do not, of themselves, show a right of recovery, and defendant cannot recover therefor. You, therefore, should consider only such contracts as you

are satisfied from the evidence, are reasonably certain as to the amount and date of the consummation thereof. Mere indefinite promises are matters of speculation and cannot be made the basis of a claim for damages.”

IV.

The Court erred in giving plaintiff's requested Instruction No. IV, contained on page 5 of the instructions submitted by plaintiff, which said instruction is as follows:

“Should you fail to find in favor of the plaintiff, according to the last instruction above given you, then it would become your duty to consider the question of the counterclaims or offsets set up in the third amended answer by the defendant, and I instruct you in respect thereto that anticipated profits, to be considered as an item of damage, must be shown with some degree of certainty, and the jury must be able to estimate their amount without resorting to speculation or conjecture. Mere estimates, speculations or conjectures of witnesses, not founded upon actual facts, or testimony that the plaintiff thinks or calculates that he would have been able to sell a certain amount, are insufficient.” [27]

V.

The Court erred in giving plaintiff's requested Instruction No. XII, contained on page 13 of the instructions submitted by the plaintiff, which said instruction is as follows:

“It is admitted in the pleadings that the contract made and entered into in the year 1917 provides that same may be canceled by either party upon fifteen days’ notice. You are therefore instructed that the defendant was not warranted in entering into any contracts or accepting orders for the sale of either refined or lubricating oils, the deliveries of which extended over a period of more than fifteen days, and the defendant cannot recover any damages for loss or profits by reason of same.”

VI.

The Court erred in giving plaintiff’s requested Instruction No. XIII, contained on page 13 of the instructions submitted by the plaintiff, which said instruction is as follows:

“The jury is instructed that under the terms and conditions of the contract of 1915, the defendant was not warranted in entering into any contracts or orders for the sale of either refined or lubricating oils, the delivery of which was to be made in the future, and defendant cannot recover any sum as damages for loss of profits on such contracts or orders, unless such contracts or orders were confirmed by the plaintiff after notice thereof by defendant.”

VII.

The Court erred in rejecting the evidence offered by defendant to prove the cost and expense of furnishing and maintaining the necessary dock, warehouse, and storage facilities for the sale of refined

and lubricating oils, greases, etc., under the contract of 1915.

VIII.

The Court erred in rejecting the evidence of defendant as to the general business conditions of the trade in the Territory of Alaska and the vicinity during the years covered by the contracts mentioned in the pleadings.

In presenting the foregoing motion, the defendant will rely upon the records and files in the above entitled cause.

Respectfully submitted, [28]

H. L. FAULKNER,
Attorney for Defendant.

Copy rec'd this 27th day of Jan. 1923.

JNO. R. WINN,
One of the Attys. for Plaintiff.

Filed in the District Court, District of Alaska, First Division. Jan. 27, 1923. John H. Dunn, Clerk. By W. B. King, Deputy. [29]

In the District Court for the Territory of Alaska,
Division Number One, at Juneau.

No. 2013—A

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Plaintiff,

vs.

C. W. YOUNG COMPANY, a Corporation,
Defendant.

Order Overruling Motion for New Trial and Granting Stay of Execution.

This matter having come on regularly for hearing on January 29, 1923, upon the motion of the defendant, C. W. Young Company, a corporation, for a new trial herein, and the matter having been argued in open Court by counsel for plaintiff and defendant, and the Court being fully advised in the premises;

It is hereby ORDERED that said motion be and the same is hereby overruled, and the defendant is allowed an exception to said ruling.

And upon stipulation of counsel it is hereby further ORDERED that the defendant have ninety days within which to prepare and settle the bill of exceptions upon appeal herein, and it appearing that the plaintiff has attached certain property of the defendant in this action, and that defendant has given plaintiff a redelivery bond with good and sufficient sureties in the sum of \$8,500.00, which said bond remains in full force and effect,

It is further ORDERED that a stay of execution be and the same is hereby granted to defendant for a period of thirty days from the date hereof without any additional bond, providing said redelivery bond is kept in force and effect during said period, and providing that at the expiration of said period, or prior thereto, defendant will furnish [30] the proper bond for stay of execution and appeal to be approved by the Clerk of this Court.

Done in open court this 30th day of January, 1923.

THOS. M. REED,
Judge.

O. K.—JNO. R. WINN,
Of Attorneys for Plaintiff.

Filed in the District Court, District of Alaska, First Division. Jan. 30, 1923. John H. Dunn, Clerk. By —————, Deputy.

Entered Court Journal No. S, page 66. [31]

In the District Court for the Territory of Alaska, Division Number One, at Juneau.

No. 2013—A.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Plaintiff,

vs.

C. W. YOUNG COMPANY, a Corporation,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED, That the above-entitled cause came on duly and regularly to be tried at Juneau, Alaska, on Thursday, the 18th day of January, 1923, before the Honorable Thos. M. Reed, Judge of said Court, and a jury.

The plaintiff was represented by its attorneys and counsel, Messrs. Winn & Ooghe and L. C. Kel-

ley; and defendant was represented by its attorney and counsel, H. L. Faulkner, Esquire.

A jury having been impaneled, opening statements were made to the Court and jury by Judge Winn on behalf of the plaintiff and by Mr. Faulkner on behalf of the defendant.

Whereupon the following proceedings were had and done, to wit: [33]

Testimony of Wilfred C. Trew, for Plaintiff.

WILFRED C. TREW, called as a witness on behalf of the plaintiff, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. Just give the reporter your first name, Mr. Trew, will you?

A. Wilfred C. Trew.

Q. Where do you live, Mr. Trew? A. Seattle.

Q. Are you now, or have you been in the past in anywise connected with the business of the Union Oil Company, the plaintiff in this case?

A. Yes, I have been, since 1906.

Q. What has been your business, or what has been your position with that company covering the period from 1906 up to the present time?

A. Since 1914, credit manager at Seattle.

Q. Credit man. Will you just explain to the jury what you mean by "credit man"?

A. Have charge of the credits for Washington,

(Testimony of Wilfred C. Trew.)

British Columbia and did have charge of the credits in Seattle, or in Alaska.

Q. Your company did some business up here for a while, in what year?

A. We started selling to the C. W. Young Company about the latter part of 1911, I think.

Q. That is, you started in shipping some oil to Alaska some time in 1911? A. 1911.

Q. And when did you quit? [34]

A. August, 1918.

Q. Now, from 1914, did you say, up to the present time, you have been what is called a credit man of the Union Oil Company? A. Credit manager.

Q. Credit manager. I meant "manager"—of the Union Oil Company stationed in Seattle. And your duties extend over what territory?

A. Washington, British Columbia and Alaska.

Q. Do you know Mr. J. C. McBride?

A. Yes, sir.

Q. When did you first become acquainted with him?

A. About December, 1914, or January, 1915.

Q. Now, I will ask you, Mr. Trew, if you came to Juneau any time during the year 1918.

A. Yes; the latter part of August.

Q. Mr. McBride was occupying what position, if any, with the C. W. Young Company?

A. He was president of the C. W. Young Company.

Q. Did you have any conversations with Mr. McBride, concerning any dealings that the Union Oil

(Testimony of Wilfred C. Trew.)

Company had had with the C. W. Young Company prior to August, 1918, when you were up here?

A. Yes; we discussed the matter generally.

Q. Was there at that time any outstanding account between the Union Oil Company and the defendant, the C. W. Young Co., in this case?

A. Yes; there was an amount extending back into 1917 and all the deliveries for 1918 were unpaid for.

Q. 1917 and 1918. That was the period of time that you conversed with Mr. McBride about representing the C. W. [35] Young Company, concerning the products of the company for the two years that you have just last mentioned? A. Yes.

Q. Now, then, you say that there was an outstanding account between the C. W. Young Company and the Union Oil Company at that time?

A. Yes.

Q. Did you and Mr. McBride, Mr. McBride representing the defendant company in this case, have any conversation about this outstanding account or any amount that was due from the defendant, the C. W. Young Company, which indebtedness had accrued prior to August, 1918?

A. Yes; we checked over the account, but the figures didn't agree.

Q. Well, even if your figures didn't agree, when you and Mr. McBride checked over your account, it was found that the Union Oil Company was on the debit or credit side of the account, so far as the C. W. Young Company and the Union Oil Company were concerned?

(Testimony of Wilfred C. Trew.)

A. The amount that we claimed owing on our books differed with the amount owing—with the amount the C. W. Young Company were showing at that time by possibly three hundred dollars.

Q. Now did you and Mr. McBride, you representing the Union Oil Company and Mr. McBride the C. W. Young Company, go over these respective figures that you have just mentioned?

A. Yes; Mr. Earl Naud, Mr. McBride and myself attempted to check the account, but there had been so many mistakes made in the extensions of the tickets that they had sent [36] to us that we had corrected when they got to Seattle, that it was almost a hopeless task to make our books agree with theirs, and we accepted, mutually agreed at that time, to accept the figures that the C. W. Young Company's books showed.

Q. That is, for the products that you had shipped to the C. W. Young Company prior to August, 1918?

A. Yes.

Q. And covering what period of time—what year?

A. The greater part of the year 1917 and all of 1918.

Q. Those two years? A. Yes, sir.

Q. Now, then, did you and Mr. McBride and Mr. Naud go over the books of the C. W. Young Company to ascertain as to the condition of the account as shown by their books, as between the plaintiff and defendant in this case? A. Yes.

(Testimony of Wilfred C. Trew.)

Q. Did they furnish you, at that time, with any statement of what their books showed?

A. Yes; they did.

Q. I'll hand you these papers, which consist of several pages, and ask you to look at them and see if that is the statement that was furnished you by Mr. McBride at that time and shows that he claimed was the condition of the account existing between the C. W. Young Company and the plaintiff at that time?

A. Yes (examining papers); this was the statement made out at that time by the C. W. Young Company and covered the period from January 1, 1918— [37]

The COURT.—(Interrupting.) He didn't ask you what it covered; he simply asked you what it was. You wish to see the statement?

Mr. FAULKNER.—Yes; before it is introduced.

Judge WINN.—I'm just identifying it; that's all.

The COURT.—Now you may question him further.

Q. Where was this account that I have just handed to you delivered to you, Mr. Trew, and by whom?

A. In the office of the C. W. Young Company.

Q. And who was in there?

A. Mr. McBride and Earl Naud.

Q. Now, there are several places here and in order to explain them—they're made out in terms that might need some explanation further. Well, I'll withdraw the question.

(Testimony of Wilfred C. Trew.)

Judge WINN.—If your Honor please, we now offer this statement in evidence.

Mr. FAULKNER.—I would just like to ask the witness a question.

The COURT.—You may.

(Questions by Mr. FAULKNER.)

Q. Mr. Trew, this statement simply contains some figures? A. Yes, sir.

Q. And nothing else on it? A. No.

Q. Who gave you that statement?

A. Mr. Earl Naud.

Q. And that was made up by him? A. Yes.

Q. And that simply contains a statement of the oil that [38] was not paid for?

Mr. KELLEY.—Well, that's cross-examination.

Mr. FAULKNER.—I want to find out what the statement contains.

The WITNESS.—Well, I was just going to answer the question and state what it contained to Judge Winn.

Q. That was given you by Mr. Naud?

A. Yes, sir.

Mr. FAULKNER.—I don't think we have any objection.

Q. (Examination resumed by Judge WINN.) Well, was Mr. McBride there? A. Yes, sir.

Q. And did Mr. McBride go over it?

A. Mr. McBride didn't check the statement himself.

Q. Did he say anything about it?

A. He asked Earl if it was correct.

(Testimony of Wilfred C. Trew.)

Q. What was the answer?

A. He said it was and agreed with their books. This is a statement—

The COURT.—(Interrupting.) Now, wait a moment.

Judge WINN.—Now, then, we offer the statement in evidence.

The COURT.—The statement may be received and filed and marked as plaintiff's exhibit.

(Whereupon said statement, consisting of 22 sheets and dated August 24, 1918, was received in evidence and marked Plaintiff's Exhibit No. 1.)

Q. Now, as I stated before—I started to state and then withdrew the question—this statement consists of several pages. I will ask you if you have any explanation to make as to the entries that are made thereon and what [39] certain ciphers, or certain figures there indicate, and was so understood to indicate between you and Mr. McBride and Mr. Naud, when it was made out?

A. Every time they sold a bill of goods, they made out an order on one of our order blanks. The order blanks were numbered—number of the books and the different tickets in the book. This statement was made out for each separate month of the year 1918, the tickets listed—ticket numbers listed and the amounts listed, and at the end of each month the commissions that the C. W. Young Company were entitled to, were deducted from the total amount for each month there, recapitulated on the first sheet.

(Testimony of Wilfred C. Trew.)

Q. That is, you mean, the first sheet that's on this exhibit?

A. The first sheet is a recapitulation of each month.

Q. You put it on Plaintiff's Exhibit No. 1?

A. Yes.

Q. That is a recapitulation of what?

A. Of the several months of the year 1918, up to and including August.

The COURT.—That is the monthly sales, or just a recapitulation of the monthly sales?

The WITNESS.—Yes.

The COURT.—During 1918?

The WITNESS.—Yes, sir.

Q. Has it anything on there concerning the year of 1917?

A. Nothing on for the year 1917, because at that time I received payment for the account up to and including December 31, 1917. [40]

Q. From whom did you receive that?

A. From Mr. McBride.

Q. So the amounts prior to the first of January, 1918—

A. (Interrupting.) There was no occasion to make out a statement for the time previous to that, because we accepted their figures for that amount and gave them credit in full for the account, up to and including December 31, 1917.

Q. Now, about this statement which we have just offered in evidence, which is marked Plaintiff's Exhibit No. 1, which was made out from

(Testimony of Wilfred C. Trew.)

C. W. Young Company's books, and that your books and their books showed there was a slight difference in, did you accept their statement or did you stand upon the statement as your books showed as to what the condition of the account was at that time?

A. We accepted their figures. We spent some weeks in Seattle trying to reconcile their figures and made a small attempt to reconcile them here, but we couldn't do so, for the reason that the difference had been accumulating for months in the extension of the tickets.

Q. Did you accept this account, exhibit No. 1, as the condition of the affairs between the plaintiff and the defendant at the time it was delivered to you and up to that date?

A. Yes; and when I returned to Seattle we put through a credit, reducing our account to this amount.

Q. What is the total amount there as indicated?

A. \$3738.17. [41]

A. Thirty-seven, three— A. \$3738.17.

Q. You have read over the complaint and that is the amount that is in the first cause of action in this case? A. Yes, sir.

Q. Has that account ever been paid?

A. No; this has never been paid.

Q. Any portion of it? A. No.

Q. Is it due? A. Yes, sir; past due.

Q. When it became due, what understanding, if any, did you have with Mr. McBride, representing

(Testimony of Wilfred C. Trew.)

the C. W. Young Company as to when it would be paid?

Mr. FAULKNER.—I didn't get that question.

Judge WINN.—I asked him what conversation, if any, he had with Mr. McBride concerning when this balance that the account shows was to be paid.

A. I told Mr. McBride at that time that I had come to Juneau to get the account paid in full. Mr. McBride told me that he couldn't pay the account in full at that time, and after thinking the matter over, said he could pay approximately \$4,000. On checking over the account, I noticed that a payment of \$4,000 would pay the account approximately up to December 31, 1917—it required a couple of hundred dollars extra to make the payment—so Mr. McBride agreed, at that time, to make the check sufficient to include December 31, 1917.

Q. And that was done?

A. Yes; I got that check. [42]

Q. Now, what, if anything, has been done regarding this balance that is shown on exhibit No. 1? Was any time specified as to when it was due or when it was to be paid?

A. Mr. McBride said he would pay it as soon as he possibly could.

Q. Was it due at the time you were up here?

A. Oh, yes; it was all past due.

Q. In August, 1918, it was past due?

A. Yes, sir.

Q. Now, then, did you have any further conversation or dealings at that time with Mr. McBride,

(Testimony of Wilfred C. Trew.)

representing the C. W. Young Company, and yourself representing the Union Oil Company, concerning any stock of oils or greases, and so forth, that were on hand at Juneau at that time, which had been shipped by the Union Oil Company up to the C. W. Young Company?

A. Yes; we took a physical inventory of all the stock on hand at that time, both at the dock and at the C. W. Young Company's store.

Q. Well, you say you did. Did you and Mr. McBride further have any agreement or conversation concerning the amount of stuff that was then on hand which had been shipped up here to the C. W. Young Company by the Union Oil Company?

A. Yes; we talked of the sale of the stock on hand on account of the excessive rates and the cost of bringing it back to Seattle, and Mr. McBride said he would purchase the stock on hand if we would make him a reasonable price.

Q. That stuff was here in Juneau at the time?

A. It was here in their warehouse and on the dock. [43]

Q. What, in a general way—

The COURT.—(Interrupting.) Just wait a moment. I want to ask you a question. This is the stock that was left over after your settlement for the sales made by you of the oil which had been shipped under your contract, or agreement, as alleged in the complaint—

The WITNESS.—Any settlement that I might have had concerned goods that had already left the warehouse. They were sold.

(Testimony of Wilfred C. Trew.)

The COURT.—But this was the stuff that was left which you had shipped up to the C. W. Young Company under your written agreement?

The WITNESS.—Yes.

The COURT.—That's what I wanted to find out.

Q. And had, or had not this stuff that you found on hand at that time, that is, you and Mr. McBride, been paid for?

A. It hadn't been paid for. It was still the property of the Union Oil Company until sold.

Q. Well, now, did you and Mr. McBride, after going over what was on hand here at that time, unpaid for, have any understanding as to what disposition would be made of it?

A. I explained to Mr. McBride that it would cost a lot to move it back to Seattle and I asked him if he could sell it. He said that if we made him a favorable price he thought he could. I asked him if he could take all of it. He said yes; that some of the commodities might move slowly, but that if we made him a good price, he would take all of it, according to the inventory that we took at that time. [44]

Q. What did it amount to?

A. It amounted to twenty-five, eighty-seven thirteen. (2587.13), I think.

Q. Twenty-five what?

A. Twenty-five, seventy-eight, thirty-one (2578.-31).

Q. You have read over the complaint in this case?

A. Yes.

(Testimony of Wilfred C. Trew.)

Q. Now, that is what we have termed the second cause of action? A. Yes.

Q. The figure that is in the complaint there is the balance due, is the amount that you have just stated? A. Yes.

Q. Well, look it over.

A. (After examining pleadings.) Yes; that's the amount—\$2578.31.

Q. \$2578.31. Well, did you ship it back, or what became of these products or oils that were on hand?

A. In order to close out the stock at that time, the same as if we would make a sale to a customer, we used one of the order forms that they had been using, listed all the stock as per inventory, but didn't extend the ticket as I told Mr. McBride at that time that I would take it up with the sales manager and endeavor to get him a slightly better price on the commodities that wouldn't move quickly.

Q. Then, according to that statement, it amounted to a little over this amount on the second cause of action, \$2578.31.

A. Yes; it amounted to something like one hundred and thirty-five or thirty-seven dollars more than that. [45] I was giving him at that time the very best price that I was authorized to give—what we considered a jobber's price.

Q. Then, did you afterwards give him the benefit of that one hundred and thirty-six and some odd dollars?

A. Yes; after explaining the matter to the sales manager at Seattle. I told him that some of the

(Testimony of Wilfred C. Trew.)

commodities might not move for a long while and asked him if he could reduce the price and he did reduce it to the extent of approximately \$136.

Q. Was the C. W. Young Company advised of this?

A. Yes, we wrote them to that effect.

Q. That reduced the sale to \$2578.31, after you took off the 136 dollars and something.

A. Yes, sir.

Q. Who kept the oil? Was it reshipped to you or did the C. W. Young Company keep it?

A. No, it remained here in their warehouse.

Q. Has that amount ever been paid by the C. W. Young Company? A. No.

Q. Is it due—past due?

A. Yes; past due.

Q. How long has it been past due?

A. Since September 10, 1918.

Q. September 10, 1918. When did you invoice it, in September or October?

A. We invoiced it October fifth. Then, I want to correct [46] that statement. It was invoiced October 5, 1918, and would be due on the tenth of the following month; although the actual delivery of the goods took place in August, it was not invoiced until October fifth.

Q. Then it was actually due on what date?

A. November tenth.

Q. 1918. A. Yes.

Q. Has any part of that been paid? A. No.

Judge WINN.—That's all.

(Testimony of Wilfred C. Trew.)

Cross-examination.

(By Mr. FAULKNER.)

Q. What was this last item of \$2578.31.

A. Consisted of the oils on hand in Juneau.

Q. What is that?

A. Consisted of the oils on hand in Juneau at that time.

Q. In November, 1918? A. In August.

Q. Now, I didn't get quite clearly through my mind the distinction between these two items. Was the \$2578.31 all that was due in August, 1918, Mr. Trew? In other words, just explain the matter. The jury might understand it better than I do, but will you explain the difference between these two items—\$3738.17 and \$2578.31?

A. What are the two amounts you are giving me?

Q. Well, the two amounts that you claim in your complaint. Now, you say that you came up here and checked up the amount of oil on hand, amounting to \$3738.17, [47] according to the statement you have introduced in evidence as exhibit No. 1. Now, that you say consisted of oil sold to the C. W. Young Company, or consigned to them, in the year 1918? A. No, no.

Q. Well, that is one thing I didn't get clear.

A. Which one do you want?

Q. The one you have in your hand?

A. This is \$3738.17.

Q. Now, what does that consist of?

A. It consists of oil sold by the C. W. Young Company from January 1, 1918, up to August, 1918.

(Testimony of Wilfred C. Trew.)

Q. Now, what was the other item of \$2578.31 for?

A. For that oil on hand in their warehouse when I arrived here.

Q. Oh, yes.

A. The oil belonged to us at that time.

Q. But the first item was the oil that they had sold, that was gone when you arrived? A. Yes.

Q. And the other item was the oil which you checked up?

A. It was on hand in the warehouse.

Q. Now, Mr. Trew, you had nothing to do with the entering into of contracts for the sale of oils, did you? A. Now, or then?

Q. Then? A. I had nothing to do with it.

Q. Who was in charge of the Union Oil Company's business in Seattle in January, 1917?

A. Mr. Clagett. [48]

Mr. KELLEY.—To which we object as incompetent, irrelevant and immaterial and not proper cross-examination.

The COURT.—I hardly think it is proper cross-examination.

Objection sustained.

Q. You had nothing to do with any of these contracts which you mentioned, for the sale of oil?

Judge WINN.—I object to that, because he hasn't testified to any contracts. He simply testified that he checked over these accounts and found that there was a certain amount due and that he accepted Mr. McBride's figures, and also that he delivered to him certain oils. I didn't ask him any-

(Testimony of Wilfred C. Trew.)

thing about any contract. That is a part of their defense.

Mr. FAULKNER.—That is true, but I don't see how it is going to do any harm.

The COURT.—He testified as to the delivery of the oil and the price of the oil agreed upon. This question is whether he had anything to do with the entering into of the contract. I think it is permissible.

Mr. KELLEY.—I don't believe that was the form of the question.

(Question repeated by reporter upon request of the Court.)

A. I don't remember any contracts.

Q. What is that?

A. I didn't mention any contracts.

Q. Now, Mr. Trew, I think you said something about certain oils that were on hand. Now the oils that were sold, representing \$3738.17, were shipped under the contract that was in effect in the year 1917? A. They were; yes. [49]

Q. Now you, yourself, had no part in entering into that contract? That wasn't a part of your duty at that time, was it? A. Yes, it was.

Q. What is that? A. Yes.

Q. And did you—

A. (Continuing.) I approved all contracts.

Q. You approved them all? A. Yes.

Q. You didn't execute the contract?

A. No; they're executed by the officials—written contracts.

(Testimony of Wilfred C. Trew.)

Q. But you are the man who negotiated this contract and in entering into it—

Judge WINN.—(Interrupting.) We object to it. Now, this particular contract of 1917—

Mr. FAULKNER.—All right. I withdraw the question.

Judge WINN.—(Continuing.) Is admitted.

Q. Mr. Trew, the amounts which you have given here, the one of \$3738.17 was the amount which was agreed upon by the C. W. Young Company as the oil they had sold during the year 1918; is that right?

A. No; it isn't the amount that we agreed on. Their books showed that amount and we agreed to accept that amount.

Q. Then you both agreed to it?

A. We both agreed.

Q. And the amount \$2578.31 was the amount that you agreed upon as the amount of oil on hand in August, 1918? [50] A. Yes.

Q. And that was all you had to do with this when you came up here at that time?

A. Why, I practically closed out the agency at that time.

Q. Yes; and you came up to check up those figures; check up the oil on hand?

A. I came up to make a settlement, check the oil on hand and close out the agency.

Mr. FAULKNER.—I think that's all.

Redirect Examination.

(By Judge WINN.)

Mr. FAULKNER.—Just one further question I

(Testimony of Wilfred C. Trew.)

want to ask. Mr. Trew, this contract, then, that was entered into in 1917, February, 1917, terminated when? You say you came here to close out the agency.

Mr. KELLEY.—To which we object, because it is admitted in the pleadings.

The COURT.—Objection sustained. The contract itself provides for its termination.

Mr. KELLEY.—Not only that, but it is admitted by the pleadings that it was ended by mutual consent in August, 1918.

Mr. FAULKNER.—According to Mr. Trew's statement, the contract was still in effect. According to his statement, it continued longer than that.

Mr. KELLEY.—Well, it's admitted in the pleadings.

The COURT.—Well, he may answer, if he knows.

Q. This contract of February, 1917, continued in effect [51] until what time in 1918?

A. We closed out the business about August 24, 1918.

Q. About August 24, 1918. A. Yes.

(Witness excused.)

Testimony of L. C. Kelley, for Plaintiff.

L. C. KELLEY, called as a witness on behalf of the plaintiff, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. Mr. Kelley, you reside in Los Angeles?

(Testimony of L. C. Kelley.)

A. I do.

Q. You are one of the attorneys for the Union Oil Company? A. I am.

Q. And one of the attorneys in this case?

A. I am.

Q. Do you know Mr. McBride? A. I do.

Q. When did you first meet Mr. McBride?

A. The first part of October, 1920.

Q. In October. The first of October, about 1920.

A. Yes; the first part of October.

Q. Where did you meet him?

A. Here in Juneau.

Q. What was your occasion for being in Juneau?

A. I was sent up here to see if some settlement of this matter could not be made.

Q. You met Mr. McBride and had a conference with him? A. Yes, sir.

Q. I'll hand you this exhibit, which is marked Plaintiff's [52] Exhibit No. 1 that has been introduced in evidence and ask you if you had that account with you at the time you came up here in October, 1920? A. I did.

Q. Did you go over that account or have any conversation about the account and the amount that was due on it, with Mr. McBride, who was representing the C. W. Young Company?

A. I had a conversation with Mr. McBride concerning this account. I can't say that I went over it with him personally, but I had a conversation with him concerning it.

Q. And you went over it personally with him?

(Testimony of L. C. Kelley.)

A. Well, that is, we went over it personally in this way, Judge: I had this Plaintiff's Exhibit No. 1 in my possession, and I told him that I wanted to check over the account and ascertain the amount that was actually due and whether or not these figures were correct, and he said, "No, there isn't any use of your doing that, Mr. Kelley. This account, prior to January 1, 1918, has all been settled with Mr. Trew and Mr. Trew has gone over all these figures—"

Q. (Interrupting.) What figures?

A. These figures in Plaintiff's Exhibit No. 1. And I said. "Well, are these figures correct?" and he handed the statement to Earl Naud and he said, "Earl, are these figures correct?" and Earl looked at this and he said, "I prepared that statement for Mr. Trew and the figures are correct." [53]

Q. Did Mr. McBride say anything in regard to that? A. No.

Q. Well, did they pay anything on it while you were up here? A. They did not; no.

Q. Mr. Naud, what capacity was he acting in, apparently, for the C. W. Young Company?

A. Really, I can't state. Well, I believe—it was my understanding, at least, that he was the head bookkeeper, although I'm not—I'm not positive concerning that.

Q. Anyway, Mr. McBride referred this account and these figures to Earl Naud? A. Yes.

Q. Now, the amount of this account is the amount that Mr. Trew has stated and is the amount set

(Testimony of L. C. Kelley.)

forth in the first cause of action in the complaint in this case. A. Yes.

Q. Did you have any further or other conversation with Mr. McBride concerning any other amount that was due the Union Oil Company from the C. W. Young Company?

A. Well, there was in addition to this, the amount set forth in the second cause of action of our complaint, which represented products which Mr. Trew had sold to the C. W. Young Company—he was here—and which had not been paid for when I came here.

Q. Did he pay anything on that? •

A. He did not.

Q. So you left town without collecting anything on either one of these amounts? A. Yes.

Q. The amount in the second cause of action for the oils [54] and so forth which was left with the C. W. Young Company and the amount that is in this account marked Plaintiff's Exhibit No. 1?

A. That is correct.

Judge WINN.—I think that is all. If your Honor please, at this time, the contract of 1917 is attached to the complaint and made a part of it—

The COURT.—(Interrupting.) It's admitted in the pleadings?

Judge WINN.—Admitted in the pleadings, and unless counsel would waive the reading of it, we offer to read it. I don't know whether it is necessary or not. Perhaps it is to get it in evidence.

The COURT.—Well, in order to make it an ex-

(Testimony of L. C. Kelley.)

hibit in the case, although it is attached to the complaint, you might make it an exhibit in the case, unless admitted by both parties that it was entered into. You might make a copy of it so that it can go before the jury.

Judge WINN.—Yes, but the pleadings cannot be evidence unless you offer them in evidence, and we offer it in evidence at this time.

The COURT.—It may be received in evidence.

Mr. FAULKNER.—We have no objection. We would just as soon have it read.

The COURT.—I think you better offer it in evidence and have it made an exhibit so that they can take it with them into the jury-room.

(Whereupon Mr. L. C. Kelley read said contract, as follows): [55]

“MEMORANDUM OF AGREEMENT.

“THIS AGREEMENT, made and entered into this 14th day of February, 1917, by the Union Oil Company of California, a corporation duly organized under the laws of the State of California, party of the first part, and (Name) C. W. Young Company of (Town) Juneau, (State) Alaska, party of the second part,

“WITNESSETH:

“1. The first party hereby appoints the second

party as its agent for the sale of its products, as follows: (Insert list of products to be sold.)

“Gasoline,

“Kerosene,

“Distillate,

“Lubricating oils,

“Lubricating greases.

“2. In the following described territory, Juneau, Alaska.

“3. It is mutually understood and agreed by the parties hereto that the second party’s authority so far as the first party is concerned is strictly limited to the terms and conditions set forth and made a part of this contract.

“DELIVERIES.

“4. The first party agrees to deliver the above-described products to the second party f. o. b. Juneau, Alaska, same to be in tank cars, iron barrels, drums, cases or packages, and for the ordinary requirements of the territory referred to in clause 2.

“SALES.

“5. It is understood and agreed by the parties hereto that all sales made by the second party shall be for cash on delivery, and in accordance with the written prices as furnished by the first party. No deliveries are to be made on credit to be carried by the party of the first part without written authority from the first party.

“REPORTS.

“6. The second party further agrees to render

such reports of the business transacted under this contract as may be required by the first party.

“EQUIPMENT.

“8. It is understood and agreed that the second party will make all retail deliveries and that all shipments made by the first party to said second party, are to be promptly and properly accounted for by said second party, and that any loss in excess of 2% which may occur by leakage or otherwise [56] after delivery by first party as herein specified, shall be paid for by the second party within ten (10) days after the close of each month's business.

“9. It is understood and agreed that the said second party shall furnish at his expense, such storage facilities as may be satisfactory to first party and necessary to the proper handling and care of such goods as are shipped to said second party under this contract.

“10. It is further understood and agreed by the parties hereto that the second party will not be entitled to nor receive any compensation covering shipments which may be made from time to time in carload lots to such trade as the first party may have at this time, or in the future acquire, within the territory referred to in the above. The said second party shall receive compensation only on such carload business as he secures directly through his own efforts, and on such carload shipments accepted by the first party for delivery to customers within the territory referred to, second party shall receive as his full compensation — per gallon.

“11. On deliveries made direct by the said second party within the territory as above described, his compensation shall be as follows:

“IN TOWN		“OUT OF TOWN	
Gasoline	1¢ per gal.	Gasoline	1¢ per gal.
kerosene	1¢ per gal.	kerosene	1¢ per gal.
distillate	1¢ per gal.	distillate	1¢ per gal.
lubricating oils	2¢ per gal.	lubricating	2¢ per gal.
greases	½¢ per lb.	grease	½¢ per lb.

“PAYMENT OF COMMISSIONS.

“12. All Commissions earned by the second party shall be paid by the first party not later than the tenth (10th) day of the month following:

“13. This agreement may be cancelled by either party upon fifteen (15) days’ notice in writing, otherwise to continue in full force and effect for one (1) year from date.

“14. In consideration of the above, the second party agrees to furnish said first party a satisfactory bond for the faithful performance of this contract, and said bond is attached hereto and made a part hereof.

“Accepted:

“C. W. YOUNG CO.,

“By J. C. McBRIDE,

“President.

“Accepted:

“UNION OIL COMPANY OF CALIFORNIA”

Witness:

E. A. NAUD. [57]

(Whereupon a recess was taken until 2 P. M.)

Friday, Jan. 19, 1923, 2 P. M.

Court met pursuant to recess.

After argument on amendment, by interlineation, of the answer, the plaintiff rested its case.

And thereupon the defendant, to maintain the issue on its part introduced the following evidence, to wit:

Testimony of J. C. McBride, for Defendant.

J. C. McBRIDE, called as a witness on behalf of the defendant, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. FAULKNER.)

Judge WINN.—If your Honor please, before they offer any evidence in the case, there have been so many motions and demurrers filed in these proceedings that it is hard to single out and put them all together and say just what has been included in the demurrer.

The COURT.—I realize that very much.

Judge WINN.—I will give Mr. Faulkner a copy. The only question we raise on this demurrer, to be particular about it, is that I demur to each one of the paragraphs of each affirmative defense separately, which probably we have done before. Whether we did it to all or not, I don't know.

The COURT.—I don't think you can demur to each separate paragraph of the complaint or counterclaim separately. You have got to consider the whole pleadings together.

(Testimony of J. C. McBride.)

Judge WINN.—That is true, but what I have done to avoid that very thing, I have demurred to the whole of it in the same paper. [58]

The COURT.—Well, now, I'll hear you on your demurrer to the whole.

* * * * *

The COURT.—I think that's already been ruled on. I'll adhere to my former ruling at the present time. If you desire to raise any questions, you can raise them, as to the admission of evidence.

Judge WINN.—I think your Honor has probably passed on it.

The COURT.—Well, it will be overruled.

Judge WINN.—Allow us an exception.

The COURT.—You have an exception to the former ruling. No use of encumbering the record.

Q. (By Mr. FAULKNER.) Mr. McBride, will you state your name?

Judge WINN.—Now, if your Honor please, we object to any testimony or evidence being introduced in this case on behalf of the defendant for the reason, in so far as the allegations of the complaint are concerned, so far as the allegations of the complaint in this case are concerned, they are admitted by the answer of the defendant—

The COURT.—Now, wait a minute. The allegations of the complaint admit that the sum of—that you sold this property to the defendant, in the sum of so many dollars; one dollar less than the amount alleged in the complaint was the value of

(Testimony of J. C. McBride.)

the property—one dollar less than the value alleged in the complaint. That is admitted.

Judge WINN.—Yes. And I object to any testimony being offered. [59]

The COURT.—As to the amount due, of course, that is simply a legal conclusion.

Judge WINN.—Then I object to any testimony being offered under the amended answer in the case, under the cross-complaint, counterclaim, or whatever they are termed—there's two of them. It's immaterial.

The COURT.—It's a counterclaim. There is no provision for a cross-complaint except in equity proceedings.

Judge WINN.—We object further for the reason that the damages sought to be recovered, if any, are speculative, remote and uncertain and such damages as cannot be recovered under the allegations set forth in either or both of these counterclaims or causes of action, whatever they're termed, in the third amended answer; and that there is nothing pleaded in either one of them that lays any foundation, even though such damage could be recovered, for the recovery of such damages. There is no foundation laid for the recovery of the profits that they have sought to recover, for the reason that if that is a profit that could be recovered under certain circumstances, the complaint is insufficient, or the cross-complaint or counterclaim, or whatever they term it, in the facts which are stated. In other words, it does not state anything, only the

(Testimony of J. C. McBride.)

bare provision in each one of them that they were to receive a certain percentage on the gallons sold of the products to be furnished by the Union Oil Company, and they claim that as an entire profit and claim to recover on that entire amount. No such recovery under any circumstances could be recovered [60] in any cause of action, even though future profits could be recovered where a seller who has not broken the contract, but the vendor has broken the contract with him, because there is not sufficient pleaded. There are other facts to be established before they can do that, and I think the law is pretty plain on that proposition. However, I may state to the Court that the demurrer and these objections can be raised now or at any other time during the course of the trial of the case. I want to raise the proposition that each one of these counterclaims, or causes of action, come within the statute of frauds and there could be no recovery of such allegations, because they are within the statute of frauds.

Now, that may possibly take some testimony, your Honor, to establish that fact. I concede that. But I don't want to lose track of that, for, under the pleadings, I think we can show the Court that the statute of frauds is raised beyond question, and at some stage I want to argue it.

The COURT.—You better concisely state your reasons and then I'll hear you on the argument fully.

Judge WINN.—Hear it now?

(Testimony of J. C. McBride.)

The COURT.—If you desire to.

Judge WINN.—I consider, your Honor, that possibly on the question of the statute of frauds, that there will have to be some evidence before the Court, in order that the Court may pass upon it. Now, upon the other matters, as to their being remote and speculative damages, such [61] as cannot be recovered, that is probably raised by the demurrer. The only question I desire to call your Honor's attention to the fact that the contract, under which the Union Oil Company was to pay them so much a gallon on the sales which they made, which they had absolutely to sell under the nature of the pleadings, it is not possible to recover any such profits.

The COURT.—No; I think you misunderstood it. As I read the affirmative answer—of course, the defendant sets up, in its first affirmative answer, the written contract, and there is one clause in there—I have forgotten the number of the clause—in relation to the furnishing of oil for the ordinary requirements of the territory referred to in another clause. The defendant has given one construction to that with which perhaps the plaintiff takes issue. The contract itself may be somewhat ambiguous. When I overruled the demurrer, I took that into consideration, that it might be considered ambiguous and the matter might be argued out on the trial of the case as to what the proper construction of that clause of the contract was. If the plaintiff was required, under that contract, to furnish the

(Testimony of J. C. McBride.)

defendant with all the oil that might be required for the territory referred to as Juneau and the plaintiff failed to do that, that would be a breach of contract, and if the defendant had procured sales of a quantity of oil which defendant had failed to procure from the plaintiff in accordance with the contract, I should think [62] that the measure of damages would not be speculative, but would be direct, in that the damages would be the amount of the compensation that would be allowed to the defendant for the sale of that oil.

The other contract, of course, is an oral contract running for a period of three years and that has got to be proved. As to the contract that was entered into and the terms of the contract as alleged by the defendant, it is for it to prove what the terms are.

For that reason, I'll overrule the motion as to the speculative part of the damages alleged and allow the testimony offered to that effect to go in. I don't think myself that that part of the affirmative answer which alleges that the defendant expended a lot of money in preparing to go on with the contract has anything to do with the damages. The damages are not based upon that. That is the way I read the pleadings.

* * * * *

Q. (Examination by Mr. FAULKNER resumed.) Mr. McBride, did you state your name?

A. J. C. McBride.

(Testimony of J. C. McBride.)

Q. What office do you now hold? What are you doing now?

A. I'm Collector of Customs at the present time.

Q. For Alaska? A. For Alaska.

Q. Are you connected with the C. W. Young Company, the defendant in this case?

A. Yes, sir.

Q. In what capacity? A. President. [63]

Q. How long have you been president of that company? A. Since 1906.

Q. Continuously? A. Yes.

Q. Were you president in the years 1914, 1915, 1916, 1917 and 1918? A. Yes, sir.

Q. Were you also manager of the company?

A. Yes, sir.

Q. Now, in what business is the C. W. Young Company engaged?

A. Wholesale business; mercantile business.

Q. Wholesale?

A. Retail and wholesale mercantile business.

Q. Where is their business conducted?

A. It's on the corner of Front and Ferry Way. I think 46 Front Street.

The COURT.—He means, in what town.

Q. What town? A. Juneau, Alaska.

Q. In what territory do you do business?

A. Alaska.

Q. What part of Alaska?

A. Southeastern Alaska.

Q. Now, Mr. McBride, did you have any negotiations with the Union Oil Company of Cali-

(Testimony of J. C. McBride.)

ifornia in the year 1914 or early in the year 1915, regarding the sale of Union Oil Company's products? A. Yes, sir.

Q. What were those negotiations? [64]

Mr. KELLEY.—Just a minute. The plaintiff objects to the introduction of this testimony for the reason that under the pleadings and under the proof which is now being attempted to be introduced, such a contract is oral and is for more than one year and is barred by the statute of frauds.

The COURT.—I'll hear from you on that.

Mr. FAULKNER.—If the Court please, I don't think that this would be just the time to raise that question. I think that the testimony will develop that the contract was acted upon by both parties during the period of something over two years.

The COURT.—Well, objection overruled. If you can show that, that changes the situation.

Judge WINN.—May we ask a preliminary question, Your Honor?

The COURT.—Yes.

Q. (By Judge WINN.) You stated that you had some arrangement with the Union Oil Company at the time specified in Mr. Faulkner's last question. With whom did you have those arrangements?

The COURT.—Now, wait a moment. You haven't got that right. He stated he had some negotiations. He didn't say arrangements.

Judge WINN.—Oh, didn't he?

(Testimony of J. C. McBride.)

Mr. FAULKNER.—We will offer to show all that.

Q. (By Mr. FAULKNER.) You had some negotiations, you say, Mr. McBride?

A. Yes, sir.

Q. Now, where were those negotiations conducted? [65] A. In Seattle.

Q. With whom? A. Mr. George Clagett.

Q. Who was Mr. George Clagett?

A. He was the agent of the Union Oil Company.

Q. What was his office? What office did he hold? A. He was manager.

Q. Now, Mr. McBride, where were you in the months of December, 1914, and January, 1915, if you remember?

A. Well, I was here in December and in Seattle in January.

Q. You went to Seattle in January?

A. Yes, sir.

Q. Do you remember how long you remained in Seattle?

A. It was quite a while. I don't remember just how long.

Q. About how long would it be—six weeks or a month?

A. Six weeks, or something like that.

Q. Now, at that time, Mr. McBride, did you enter into any arrangements with the Union Oil Company for the handling of their oil and products in Juneau—

(Testimony of J. C. McBride.)

Judge WINN.—(Interrupting.) We object to that—

Q. (Continuing.) Territory known as “Junoau”?

Mr. KELLEY.—We object to that as calling for a conclusion.

Judge WINN.—Calling for a conclusion of the witness and is not the best evidence, and it is immaterial and not binding on the plaintiff corporation in this case. To make a contract, if your Honor please, especially upon which profits, prospective profits can be based it takes a contract made with a corporation. Now, then, if he had a contract, we want to know whether it is in [66] writing, with whom he made it, and so forth, because that’s all denied.

Mr. FAULKNER.—We haven’t come to that yet.

Judge WINN.—Well, I know, but he is asking now about arrangements he had with the Union Oil Company. Well, now, who is the Union Oil Company? What were those arrangements? With whom were they made? Were they in writing, or were they oral? Were they with anybody who had authority to bind the company? We’re entitled to know that, if your Honor please.

The COURT.—Objection overruled at the present time—simply preliminary.

Q. What were those? Just state briefly what arrangements you made down there and with whom?

(Testimony of J. C. McBride.)

Judge WINN.—The same objection. Now, he asks what arrangements he made, which would include the making of a contract that they might predicate some cause of action upon.

The COURT.—Objection overruled.

A. I made an oral contract with the manager of the Union Oil Company to sell oils—refined and lubricating oils—in southeastern Alaska.

Q. Now, Mr. McBride, with whom did you have that contract? A. Mr. Clagett.

Q. Now, in negotiating this contract, what was done?

Judge WINN.—The same objection.

Q. With whom did you talk and what did you do?

Judge WINN.—No authority shown. [67]

Q. What was done? [67]

Mr. FALKNER.—Leading up to the contract. Simply preliminary. A. What did I do?

Q. Yes, and what did Mr. Clagett do?

The COURT.—Objection overruled.

Judge WINN.—There will be an exception, if your Honor please. I don't want to encumber the record to ask each time.

The COURT.—You may proceed.

A. You asked me what did I do?

The COURT.—What you did and what Mr. Clagett did.

A. Well, I went to Mr. Clagett—first, before I went below, during the season of 1914; that is, the year 1914, I discussed with different cannerymen,

(Testimony of J. C. McBride.)

different boatmen and fishermen here that owned boats—

Judge WINN.—(Interrupting.) Now, I object to the testimony, if your Honor please, as not responsive to the question. Furthermore, there is no inducement plead for his entering into this contract. We have asked for a bill of particulars. If he had a contract at all, he had a contract as set up in his answer. There is no inducement that lead him to enter into it; there is nothing said that he had this or that and the other thing and induced Mr. Clagett, acting on the part of the plaintiff, to enter into the contract. There is no damages asked in this case except upon specific contracts for sales which are set forth in the bill of particulars and he is confined to those in this case. Now, this rambling testimony of what he knew about it [68] and what could he have done and so forth, is not plead. It wasn't an inducement. It is no part of the oral contract and it is no part of the written contract. Now, I suppose that he is taking these contracts in the order in which they are set up in their answer, and the first one that is set up, is a written contract. Then all the terms and conditions of that written contract are absolutely perfect and complete. They cannot be varied by oral testimony. There is no fraud and no mistake—nothing alleged save as to the time and conditions of it. Hence he cannot testify to this. There is no inducement plead before, for the entering into of this contract. Perhaps if he had gone

(Testimony of J. C. McBride.)

down there and induced the company, through one of its managers or whoever had authority to bind the company, to do thus and so, by certain inducements, it would be different; but they should plead this inducement. They specify and allege these contracts themselves for 1917 and seek to recover on orders from certain parties whose names, private persons and corporations, are set up in the bill of particulars in this case, and they will have to confine their evidence to that.

Mr. FAULKNER.—If the Court please, these questions go to the second affirmative defense, because that is the logical order of the defense.

The COURT.—That goes without saying. The Court will not attempt to alter the order of proof or say as to which cause of action you will direct testimony to. However, I think your testimony should be limited to [69] the exact transaction with reference to the contract itself.

Mr. FAULKNER.—I think so.

The COURT.—And not to any preliminary matters, or what induced Mr. McBride to enter into the contract. So I will sustain, strike out that portion of his testimony. The testimony should be directed to what he and Mr. Clagett did together, jointly, in making the agreement, in pursuance of the agreement, at that time in Seattle. You can confine your testimony to that.

Q. What was the contract entered into with Mr. Clagett? A. Well—

(Testimony of J. C. McBride.)

Judge WINN.—The same objection. No foundation laid for answering the question; no authority shown on the part of Mr. Clagett to bind the company, either on any oral or written contract in the case. No foundation laid for him to answer the question.

The COURT.—Objection overruled.

Q. What were the terms of the contract, Mr. McBride?

A. The terms of the contract were that I was to build a dock at Juneau, on Gastineau Channel—

Judge WINN.—(Interrupting.) Now, wait, if your Honor please; we object to this part of it because there is nothing in the pleadings in the world in his second cause of action that says anything about it, that the contract was based upon the inducement that he was to build a dock. So far as that is concerned, there is no issue raised in this case, if your Honor please, but that Mr. McBride had the facilities. They haven't asked to recover [70] anything in this case for those facilities. That isn't an issue in the case at all. The building of the wharf is no part of the contract. It isn't an inducement. They don't seek to recover for the expense of building it or the expenses of maintaining it. He simply, in the complaint, in their complaint or pleadings, seek to recover what they allege as actual damages on the contracts of sale as figured up in the bill of particulars in this case.

The COURT.—I think the second cause of action

(Testimony of J. C. McBride.)

sets forth, as a consideration, the building of the wharf, and the objection is therefore overruled.

Q. What were the terms of the contract?

A. I was to build a dock to handle the oil for sale in southeastern Alaska, and they were to pay me a commission for selling the oils.

Q. Now, was there anything else you were to furnish besides a dock?

Judge WINN.—We object to it as incompetent, irrelevant and immaterial under the pleadings.

The COURT.—Objection overruled.

A. I was to furnish a place for a man to live in and a place for boats to land and service of my store.

Judge WINN.—I move to strike that out. There is nothing in the world in the pleadings in this case. He said he was to furnish a dock. There is nothing said about services and nothing about a residence and nothing about any boats.

The COURT.—Oh, yes it does. [71]

Judge WINN.—About a residence?

The COURT.—Storage facilities for handling and selling the commodities. That is a consideration mentioned in the contract. Objection overruled.

Judge WINN.—Allow us an exception, if your Honor please.

The COURT.—You may take your exception.

Q. Now, Mr. McBride, you say you were to furnish the facilities you have mentioned?

A. Yes, sir.

Q. What was the Union Oil Company to do? What did Mr. Clagett agree to furnish?

(Testimony of J. C. McBride.)

A. He agreed to furnish me with the oil for sale—lubricating oil and refined oil.

Q. How much oil? A. All that I could sell.

Q. All that you could sell. A. Yes, sir.

Q. In what territory? Any limitations put on it? A. In southeastern Alaska.

Q. Now, Mr. McBride, do you have in your mind now and can you tell us the commission that you were to receive and on what terms you were to sell this oil?

A. On refined oil I was to receive one cent a gallon and on the lubricating oil, under our oral contract, I was to get ten per cent, but later I got two cents a gallon.

Q. When was that changed?

A. That was changed the third year.

Q. In 1917? A. Yes, sir. [72]

Q. So, for the years 1915 and 1916, you were to get a cent a gallon on the oil?

A. On refined oil.

Q. Refined oil. And ten per cent of the price was it— A. Yes.

Q. (Continuing.) Of the lubricating oil?

A. Yes, sir.

Q. And what on greases?

A. It was so much a pound. I don't recall that right now.

Q. Now, Mr. McBride, did you have any, after you made this contract that you speak of, did you have any correspondence or any memorandum in writing from the company or from Mr. Clagett referring to this contract? A. Yes, sir.

(Testimony of J. C. McBride.)

Q. I'll hand you here a letter dated March 1, 1915, and ask you where you received that, and whose signature that is?

A. That is Mr. Clagett's signature and I received it at our office from the Union Oil Company in Seattle.

Mr FAULKNER.—Now, we'll offer that in evidence.

The COURT.—You offer this in evidence?

Mr. FAULKNER.—Yes.

Judge WINN.—No objection.

The COURT.—It may be received.

Q. Where were you when you received this letter?
A. In Juneau.

Q. Well, just look at it again.

A. Oh, this letter here (indicating)?

Q. Yes.

A. Oh, at Seattle; at the Rainier-Grand Hotel.

[73]

Mr. FAULKNER.—We'll offer that as Defendant's Exhibit "A."

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "A," and afterward read by Mr. Faulkner, said letter being in words and figures as follows, to wit:)

Defendant's Exhibit "A."

"Seattle, Wash., March 1, 1915.

"The C. W. Young Co.,

"Mr. J. C. McBride,

"Care Rainier-Grand Hotel,

"City.

"Dear Sir:

"In confirmation of our various conversations in the past and referring particularly to phone conversation with you this morning, I take pleasure in stating that we are now ready to ship our oils to Juneau to be handled by you on a commission basis on the following terms and conditions:

"You are to furnish the necessary dock, warehouse, etc., together with appliances necessary for handling the oils, we in turn to pay you 1¢ per gallon commission for handling same, both in bulk and cases, on refined oils, and a commission of 10 per cent on lubricating oils, together with commission of 1/2 cent per lb. on all greases.

"The oils will be consigned to our own account at Juneau, and all transactions will be handled in our name.

"Prices at all times will be under our control, and you will be expected to abide strictly by the prices we give you from time to time. We naturally expect to be in position at all times to meet the price made by the Standard Oil Co., but are not in favor at any time of quoting under their established prices, for the reason that this leads to price competition, which is fatal.

“Our selling prices at the present time in Juneau will be as follows:

“Gasoline, bulk, $14\frac{1}{2}\text{¢}$ per gallon.

Gasoline, cases, 21¢ per gallon.

Benzine, bulk, $13\frac{1}{2}\text{¢}$ per gallon.

Benzine, cases, 20¢ per gallon.

No. 1 engine distillate, bulk, 10¢ per gallon.

Water White oil, bulk, $12\frac{1}{2}\text{¢}$ per gallon. [74]

Union kerosene, cases, to boats 23¢ per gallon.

Union kerosene, cases, to store trade, $19\frac{1}{2}\text{¢}$ per gallon.

Exray kerosene, cases, to boats, 31¢ per gallon.

Exray kerosene, cases, to store trade, 29¢ per gallon.

Aurora kerosene, cases, to boats, $24\frac{1}{2}\text{¢}$ per gallon.

Aurora kerosene, cases, to store trade, $22\frac{1}{2}\text{¢}$ per gallon.

“We market our Union kerosene against the S. O. Co’s Pearl Oil; our Aurora against their Eocene, and our Exray against their Elaine. Our Gasoline, of course, we market in competition with their Red Crown.

“Prices on various lubricating oils will be as follows:

“Medium Motoreze, barrels, 52¢ per gal.”

Judge WINN.—I don’t think that it is necessary to read all that.

Mr. FALKNER.—No; there’s several pages of prices, etc.

Judge WINN.—There isn’t anything in that for the jury to consider.

(Reading resumed by Mr. Faulkner.)

* * * * *

“We have given you above a general list of our

various lubricating oils, but do not expect to ship you a full stock of these oils for the reason that you will only be developing trade in them gradually. From the prices given you, it will enable you to quote intelligently on oils such as you might need at some future time.

“Our Motoreze is the best oil on the market for automobiles. Would recommend light Motoreze for truck use around Juneau, or medium or heavy, if the cylinders are much worn. We sell a great deal of heavy Motoreze to large gas boats with heavy duty engines.

“Our Ideal gas engines we market in competition with the Standard Oil Co.’s Standard gas engine.

“Perfecto gas engine is a better grade.

“Topaz gas engine is the cheapest oil we have and is a good oil for the money.

“Our Union gas engine is similar to heavy Motoreze for use in heavy duty engines. [75]

“We are also marketing for automobile users four more grades of automobile oil, namely, Union Auto, Union Auto X, Union Auto XX, Union Auto XXX. Union Auto is an excellent oil for Ford machines or new cars. The X, XX and XXX are of the same characteristics, but heavier in body. They are all A-1 oils for automobile use or gas engine lubrication of any kind.

“Our Oleum valve oil is especially adapted for wet steam conditions. This oil contains the necessary compound of high grade animal oils to produce the best possible results where wet steam

conditions prevail. Suitable for any steam pressure.

“We also have an Oleum mineral valve oil which sells at the same price, which is a strictly mineral oil and contains no compound. Suitable for any steam pressure.

“Our Union cylinder W. S. has high fire test and great viscosity. This oil is compounded, and is an oil of great endurance. Used principally for wet steam conditions. Suitable for 125 to 200 lbs. steam pressure.”

Mr. FAULKNER.—The next two pages simply describe the characteristics of the oils. There is nothing material about that. Simply takes up the time of the jury.

* * * * *

“Our prices on grease will be as follows:

“Barrels, 7¢ per lb.

Half Barrels 7½¢ per lb.

50# pails 9¢ per lb.

25# pails 9¢ per lb.

10# pails 10¢ per lb.

5# pails 10¢ per lb.

1# cans 11¢ per lb.

“Grease comes in various consistencies numbered 3, 4 and 5. #3 grease would be suitable for your trade, or we can give you #2, which we term our transmission heavy. #4 and #5 would be almost too hard for use in your territory.

“In the first shipment we make you, we will send you a complete set of samples of our various grade of lubricating oil, together with samples of greases.

“Shipments will be made you in iron drums holding from 105 to 110 gallons each. All of these drums bear a large brass plate with the number of the drum thereon. The capacities of the drums are marked on the hoop near the side bung. You will find the number of gallons [76] the drum holds stamped thereon.

“We use the following colors to designate the various commodities. The heads of the drums are painted with these colors, as follows:

Kerosene, white.

Distillate, blue.

Benzene, red.

Gasoline, red.

“In addition, the name of the product is stencilled on each end of the drum.

“The value of these drums is \$10.00 each, and any one desiring to take a drum from your premises, you will require them to put up a deposit of \$10.00, which will be returned to them when the drum is returned to you. It is very important that you keep a complete record of all drums coming in and going out. In making shipment from Seattle, we send you along a statement of the drum numbers and capacities. On receipt of shipment, you will check carefully the numbers of these drums, and see that there are no errors. If you should find any errors in reporting the numbers, report same promptly to us. Great care should be exercised in reading the numbers of the drums; otherwise, a 6 might be taken for a 9, and *vice versa*.

“In making sales to a customer where a drum is included, you will show on the back of the order form, in the space provided, the number of the drum and the capacity. When customer returns a drum, you will enter same on form #160, a supply of which we are sending you and, a sample of which is attached. This report is to be mailed us each week, together with your orders, etc.

“In the event of drums being delivered to responsible parties, such as canneries, credit for which we will authorize, or delivered around town where the drum is under your supervision, it is very important that the drum numbers be reported to us promptly for credit. Do not fail to show this on your order when sent in.

“When you return drums to us at Seattle, always list the drum numbers on the shipping receipt, sending us same promptly. This is very important.

“All sales are to be reported on form #C-204, which form is printed in triplicate. The original is to be sent to us, the tissue copy to remain in the book for your records, and the other copy to be given to the customer. We are attaching a copy of this report, so that you may see what information is necessary for our records. [77]

“Form 204-B is the regular salesman’s order form; these you can use in taking orders. The orders when filled to be shown on form C-204.

“In order that you may keep an accurate record of your stocks on hand, and guard against losses,

etc., you will use form C-174. This is a combined stock and sales report.

“We are attaching a sample showing how this report is to be made out. Same should be sent to us each week. At the top of the report, you will show the amount of oil on hand to begin with; on the next several lines, you will show stock that is received from Seattle; below that you will show sales, itemizing same, using a line (or more if necessary) for each order; at the end of the week, you total your orders, the total of which subtracted from the stock on hand to begin with, plus your receipts, will show what you have left. This report is to be used for the refined oils only.

“Form #476 is to be used in connection with your grease stock and sales. It will not be necessary to list your orders, but you will show your stocks on hand, stocks received, stocks sold, and stocks on hand P. M. in one amount under the column showing the different size packages.

“Form #258 is to be used in connection with your lubricating stock and sales. This form is made out exactly the same as form #476 for grease.

“All sales made by you will be strictly for cash, with the exception of oils delivered to canneries, which you know to be on a sound business basis, and to the general store trade in Juneau, which would be entitled to credit. This refers, of course, to the leading merchants in Juneau. No other credits will be approved by us until first referring the matter to this office, and should you charge out any goods to others than those referred to, we will of

necessity be compelled to charge same to your own account. We will forward you a supply of our form 311, covering credit information from those who desire to purchase from us.

“We would not authorize you to quote on cannery business for shipment direct from Seattle. There is a certain amount of this trade that will always purchase their oils direct from us at Seattle, or the Standard Oil Co., and we do not want you to quote to these concerns a delivered price. The only opportunity you will have of selling the canneries is for what surplus they might require and which they might go to Juneau for. [78]

“With respect to iron drums, we wish to particularly caution you about the handling of these. They should not under any circumstances, be allowed to depart from your care, excepting to responsible merchants and canneries around Juneau, and then only on condition that a charge of \$10.00 per drum is made, which will be written off upon return of the drum. These drums, as said, are all plated with numbers, and we keep track of these numbers very carefully, and when you allow a drum to leave your possession to anyone whosoever, a record of the number of same must be kept, and to whom charged, and when the drum is returned, a notation or credit made to that effect. A deposit of \$10.00 cash must be made by those taking drums who do not come under the caption of canneries or responsible merchants. On drums to the canners, it may be possible that some of them may find their way back to Seattle. In such cases,

(Testimony of J. C. McBride.)

we having a record of these drums charged to you, will immediately advise you of their return, and you can thus keep your records straight. We think you will find that the Standard Oil Co. is holding all their customers down to a cash basis at Juneau, except possibly the very largest merchants there. Your business, therefore, should be on a cash basis, as this is much more satisfactory to all concerned. If you find any deviation from this method on the part of the Standard Oil Co., kindly let us know at once.

“This letter has been written you in a hurry, and there are a number of points probably which I have not covered which will come along at a later date, and on which we will instruct you. In the meantime, if there is any other information you desire, kindly let me know, and we will give same our prompt attention.

“Yours truly,

“UNION OIL CO. OF CALIFORNIA,

“By GEO. D. CLAGETT,

“District Manager.”

Q. Now, Mr. McBride, you stated—I think you stated that under this agreement you were to furnish the necessary facilities for handling the oils of the Union Oil Company? A. Yes, sir.

Q. And you stated, I think, further that Mr. Clagett promised that they would supply you with sufficient oil for the southeastern Alaska trade?

A. Yes, sir.

(Testimony of J. C. McBride.)

Q. Now, after that letter of March 1, 1915, was received, [79] Mr. McBride, did you return to Juneau? A. Yes, sir.

Q. Before you returned to Juneau, what steps were taken, if any, toward furnishing the facilities mentioned in the letter which I have just read?

A. I went—

Mr. KELLEY.—Just a minute, may it please your Honor. The plaintiff admits that the C. W. Young Company furnished such storage facilities, which were satisfactory to the plaintiff.

The COURT.—Very well.

Mr. FAULKNER.—Well, I just wanted to make the record clear on that point, as I stated before, so that I will be able to save my contention in the record that the cost of furnishing the facilities should be taken into consideration in estimating the damages from the breach of contract on the part of the plaintiff, and this question is simply a preliminary question.

Judge WINN.—This admission will save his contention.

Mr. FAULKNER.—Well, perhaps it will. Now, in order to get the matter before the Court, so that the proper objection can be taken, I will ask Mr. McBride what was the cost of the dock. You needn't answer this until after the objection is made.

Q. Now, what was the cost of the dock and the tanks and the storage facilities and warehouse

(Testimony of J. C. McBride.)

which you furnished for handling these oils, pursuant to the contract entered into with Mr. Clagett?

The COURT.—You needn't answer that. [80]

Mr. FAULKNER.—Now, if the Court please, I think the record will be sufficiently saved by making that.

Judge WINN.—Well, I want to make an objection.

The COURT.—Certainly.

Judge WINN.—We object to the question, if your Honor please, on the ground that it is irrelevant and immaterial under the issues in the case; that there is nothing to be sought, nothing sought to be recovered in this case for the price or the cost of the facilities for handling the products of the Union Oil Company, and nothing sought to be recovered for the maintenance and the equipment. The defendant in its cross-complaint or counterclaim, whatever it may be termed, or in the third amended answer, seeks to recover on the loss of profits and profits only, and there can be no recovery in this case for any expenditures he may have made for facilities to handle the products of the Union Oil Company. In the first place, it is not sufficiently pleaded—there is nothing of that kind appears in the pleading, and in the second place because, in order to recover that, the pleadings would not be sufficient, because it would not state the expenses and so forth and so on for maintaining and so on of the facilities. Now, if your Honor, will notice the pleading, he will see that it

(Testimony of J. C. McBride.)

goes on and sets up that they did furnish facilities in the way of a wharf and building and so forth and so on. That's all right. The contract says that: but the other elements entering into it are absolutely immaterial; absolutely immaterial. Then he goes ahead and says the reason he seeks recovery is that he lost so much percentage on certain number of gallons and so much on gasoline [81] and so much on certain lubricating oils, and they are confined absolutely to those identical items.

Mr. KELLEY.—I don't know what the practice is in this court, your Honor, but I would like to inquire if it is proper for those questions of law—I see that Mr. Faulkner has got a lot of books stacked up on his desk—is it proper that these questions of law be argued before the jury?

The COURT.—The jury may be excused.

(Whereupon argument was had on the question of the admissibility of evidence in regard to the cost of facilities for handling oil.)

The COURT.—I'll sustain the objection and allow you an exception.

Mr. FAULKNER.—Before the Court does that, I would like to have read to the Court or to me, from the notes, the admission of Mr. Kelley as to the furnishing of the facilities. I want to get that. I want to know if it is admitted that these facilities were furnished after the contract was entered into.

Mr. KELLEY.—No; no. That is, you mean, built afterwards?

Mr. FAULKNER.—Yes.

(Testimony of J. C. McBride.)

Mr. KELLEY.—No.

Mr. FAULKNER.—I want to prove that they furnished the facilities after the contract was entered into.

(Whereupon the jury was called into the box and the examination of Mr. McBride resumed.)

Q. Mr. McBride, you say that you furnished a dock and warehouse and storage facilities for handling the oil? A. Yes, sir.

Q. Now, when was this dock and the facilities furnished? [82]

A. When the—

Q. I mean, was it after the contract mentioned or before.

Judge WINN.—Object to it as being leading. Let him state what he did.

The COURT.—Objection overruled.

A. It was after.

Q. After. A. Yes.

Q. Now, under that contract or agreement that you had with Mr. Clagett, you say that Mr. Clagett promised that he would supply the Union Oil Company here with a supply of oil sufficient to meet the requirements of the trade in Alaska?

Judge WINN.—Just a minute. The plaintiff objects. That letter that Mr. Clagett wrote doesn't so state.

Mr. FAULKNER.—That doesn't make any difference.

The COURT.—Objection overruled. He is testifying to an oral contract.

(Testimony of J. C. McBride.)

Q. You stated that that was the agreement?

A. Yes, sir.

Q. Now, Mr. McBride, under that agreement did you receive any oils from the Union Oil Company?

A. Yes, sir.

Q. During what period?

A. During the period of 1915, 1916 and 1917.

Q. How far did you go into 1917 before the agreement was changed? A. Into February.

Q. February of 1917? A. Yes, sir. [83]

Q. So that from March 1, 1915, until February, 1917, you did receive oils under this contract from the Union Oil Company? A. Yes, sir.

Q. And did you sell those oils? A. Yes, sir.

Q. As you had agreed? A. Yes, sir.

Q. Where?

Judge WINN.—Object to it as incompetent, irrelevant and immaterial, unless he is confined to the items which they seek to recover damages on.

Mr. FAULKNER.—This is just simply a preliminary question.

Judge WINN.—Any sale except those mentioned in the bill of particulars, is not admissible. Whether he sold any other oils is absolutely immaterial.

The COURT.—Objection overruled. Simply preliminary.

Mr. FAULKNER.—There is another question. The question of the statute of frauds was raised and I wanted to know whether they acted on the contract in accordance with its terms.

(Testimony of J. C. McBride.)

Q. Where did you sell the oil?

A. Sold it in Alaska.

Q. In Alaska. Now generally to whom? I don't mean to state in detail—

Judge WINN.—I object to it as incompetent, irrelevant and immaterial. Don't tend to prove any of the issues in the case and is not included within the bill of particulars, upon which the suit of damages in this case is predicated for the loss of profits.

The COURT.—Repeat the question. [84]

(Question repeated by reporter.)

The COURT.—Objection overruled.

A. Sold it to cannerymen and fishing boats, launches.

Q. Any mines? A. Mines and automobiles.

Q. Now, did you sell all the oil that was demanded during those two years?

Mr. KELLEY.—Just a minute. Object.

Judge WINN.—The same objection, your Honor please. Not a matter on which any damage is predicated in this case; absolutely immaterial under the issues.

The COURT.—I'll hear from you.

Mr. FAULKNER.—Oh, I think it is. The question is this: He says they entered into this contract to sell this oil and the Union Oil Company promised to furnish him with sufficient oil for the requirements of the territory. Now, I want to show whether they did that or not.

Mr. KELLEY.—That isn't the question.

(Testimony of J. C. McBride.)

Mr. FAULKNER.—What is that?

Mr. KELLEY.—That isn't the question.

Mr. FAULKNER.—That is the question I asked him, or at least—

The COURT.—Repeat the question. (Question repeated by reporter.)

Judge WINN.—Goes right to the main issues of the case.

Q. Mr. McBride, did the Union Oil Company furnish you with all the oil that was demanded and required to furnish the trade in the territory during that period? [85]

Judge WINN.—Object to the question, for the reason that there is a certain amount of damages that is sought to be recovered for the loss of profits of certain sales which he says he could have made or which he says he had orders for, and he has set up in his bill of particulars the names of the individuals and the different corporations, and so on, that he says he could have sold to, and as to how much was sold and what his loss of profits were in each instance, and then he sets up some other matters. That bill of particulars was furnished, if your Honor please, under a demand made under the statute. Now, then, as to whether or not generally, during this period of time, he received oil sufficient to supply the market or supply other purchasers or anybody else except those that are mentioned in the bill of particulars, is not an issue in this case at all. He is bound by those that he has given to us, because we can't meet a proposition of

(Testimony of J. C. McBride.)

that kind after he furnished us with a bill of particulars that he is supposed to rely on. He figures it all up at the bottom of the particulars, the bill of particulars, and it is the same amount that they pray judgment for.

The COURT.—Objection overruled. The question is preliminary.

Mr. KELLEY.—We save an exception.

The COURT.—Don't go into details.

Mr. FAULKNER.—Yes.

The COURT.—Of course, you are bound, confined as to what is set forth in the bill of particulars.

Judge WINN.—Allow us an exception. [86]

The COURT.—Objection overruled.

Mr. FAULKNER.—On that question, I would like to be heard. I expect to offer some additional evidence.

(Following question repeated at request of Mr. Faulkner:)

“Mr. McBride, did the Union Oil Company furnish you with all the oil that was demanded and required to furnish the trade in the territory during that period?”

A. No, sir.

Q. Mr. McBride, did you have any orders for the sale of oils that you could not fill during that period? A. Yes, sir.

Q. Now, Mr. McBride, I will ask you, have you got a notation of those names, or can you give them

(Testimony of J. C. McBride.)

from memory—names of those whose orders could not be filled? A. I have a notation.

Q. You may refer to that memorandum. You have a memorandum of the orders you received and couldn't fill?

Judge WINN.—Well, now, if your Honor please, I just want to suggest this, that if Mr. McBride has some memorandum that he has made up different from the—

Mr. FAULKNER.—(Interposing.) No; it's the same.

Judge WINN.—(Continuing.) Bill of particulars,—

Mr. FAULKNER.—The same as the bill of particulars.

The COURT.—That is a memorandum you made out?

The WITNESS.—Well, it is a memorandum that was furnished here to the Court. It's a duplicate.

The COURT.—Very well.

Q. Now, Mr. McBride, will you give us the orders and the amounts of oil that could have been sold in the years 1915 and 1916 that you couldn't supply— [87]

Judge WINN.—We object to the question as incompetent, irrelevant and immaterial; no proper foundation laid for the question. No matter what it may be, it would not furnish any basis for recovery in this case. It would be, in this instance, barred by the statute of frauds. Then he indefi-

(Testimony of J. C. McBride.)

nately says "orders." Now, what constitutes orders? Are they verbal or are they written? If they are in writing, they ought to produce them, and show to whom and the amount with the price of the oils. Now, then, if he has orders, according to his own price and according to his own evidence that he could have sold at certain prices, and so forth and so on, as set forth in the bill of particulars, that don't constitute a contract of sale under the statute of frauds. He must do something else besides that, if your Honor please, and there is no foundation laid for the introduction of such testimony at this time, and it is barred by the statute of frauds, comes within the statute of frauds. Unless there is a better foundation and more evidence offered at this time, it's not admissible.

The COURT.—The only objection that I see to the question is that the question is too indefinite in that it doesn't ask why he couldn't furnish it. You say simply the orders that you couldn't furnish. Objection is overruled on the points raised.

Q. Now, Mr. McBride, just answer that question yes or no. Have you a memorandum of them?

A. Yes, sir.

Q. Why couldn't you fill those orders?

Mr. KELLEY.—To which we object. Calling for a conclusion of the witness. [88]

The COURT.—Objection overruled.

A. I didn't have the oil.

Q. Could you get the oil from the Union Oil Company? A. No, sir.

(Testimony of J. C. McBride.)

Q. Now, will you give us a statement of those orders for the years 1915 and 1916 first—

Judge WINN.—Now, if your Honor please, I presume that the witness is referring to the bill of particulars in this case. We make the objection that there is no sufficient foundation laid for the witness to answer the question. It is immaterial; not binding upon the plaintiff in this case and comes within the statute of frauds, and is not a contract that would be enforceable, and he has laid no foundation whatsoever for the introduction of the testimony.

The COURT.—You want to raise the question of the statute of frauds at the present time?

Judge WINN.—Well, I raise it now. I suppose the same objection will go to each one of these questions.

The COURT.—Objection overruled. He may answer for the present. You can move to strike it out later if it is within the statute of frauds. I don't think it is at the present. He may answer the question.

Q. For 1915 and 1916.

A. For 1915 and 1916?

Q. Yes. A. The oils that I had orders for?

Q. Yes.

A. Hoonah Packing Company of Hoonah; Hoonah Packing Company of—

Q. (Interrupting.) Just give the amounts. [89]

A. 50,000 gallons for 1915 and 50,000 gallons for 1916. Taku Canning and Cold—

(Testimony of J. C. McBride.)

Q. (Interrupting.) You left out the lubricating oil.

A. 2500 gallons for each year. Taku Canning and Cold Storage Company, 40,000—

Judge WINN.—(Interrupting.) Wait; wait. We urge the same objection that we urged before.

The COURT.—Objection overruled.

Mr. KELLEY.—My understanding is that the question asked him to read it all. He has only read it for 1915 and 1916.

Mr. FAULKNER.—That's all we're asking him.

Mr. KELLEY.—Oh; you didn't ask for that yet.

The COURT.—No; he is taking the second cause of action and proving that without reference to the first cause of action.

Q. Very well, the next?

A. Taku Canning and Cold Storage Co., 40,000 gallons for each year of 1915 and 1916 and 2,000 gallons for each year of lubricating oil for 1915 and 1916. Chichagoff Mining Company 25,000 gallons of—

Judge WINN.—Wait; wait. The same objection to the amounts he has for the Chichagoff Mining Company.

A. (Continuing.) Refined oil.

Judge WINN.—It is immaterial and comes within the statute of frauds.

The COURT.—There is no use of your interjecting objections all the time. You have got your objection to this for all these items for the years 1915 and 1916.

(Testimony of J. C. McBride.)

Judge WINN.—Well, if that is the understanding.

The COURT.—That is the understanding and you have got your exception. [90]

A. 1250 gallons—

Q. Now, the Chichagoff Mining Company.

A. 25,000 gallons in 1915—that's refined oil—and 1250 gallons of lubricating oil in 1916; the National Independent Fisheries launch "King & Winge" and "Scandia," 20,000 gallons for each year of 1915 and 1916, and a thousand gallons of lubricating oil for each year of 1915 and 1916; Pacific-American Fisheries Company, 30,000 gallons for each year, each of the years of 1915 and 1916, and 1500 gallons of lubricating oil for each of those two years; James Davis, 15,000 gallons for each year of 1915 and 1916, and 750 gallons of lubricating oils for each of those two years; Hunter and Dickinson, 5,000 gallons each for 1915 and 1916, and 250 gallons for each of those years, of lubricating oil, for those two years; launch "Rolfe," 2,000 gallons for the two years, 1915 and 1916, and a hundred gallons of lubricating oils for each of those two years; launch "Tillacum" 1,000 gallons for each year of 1915 and 1916, and 50 gallons of lubricating oil for those two years: "Anita Philips," 3,000 gallons for each of the years 1915 and 1916, and 150 gallons of lubricating oil for those two years; "Pete Madsen," 2500 gallons for each of those years of 1915 and 1916, and 125 gallons each year of lubricating

(Testimony of J. C. McBride.)

oil; launch "Morengen," 5,000 gallons each for 1915 and 1916, and 250 gallons each for those two years—

The COURT.—250 gallons each of what?

The WITNESS.—Lubricating oil. "Gypsy," 200 gallons of gasoline for each of those two years, and 10 gallons of lubricating oil for each year of 1915 and 1916; launch "Pacific" [91] 5,000 gallons each for 1915 and 1916 of refined oil and 250 gallons of lubricating oil for those years; launch "Olga" 2500 gallons each for 1915 and 1916 and 125 gallons of lubricating oil for those two years; launch "Orien," 2500 gallons each for the years 1915 and 1916 of refined oil and 125 gallons of lubricating oil for each of the two years; launch "Carita" 4,000 gallons each for 1915 and 1916 and 200 gallons of lubricating oil for each of those two years; Scandinavian Grocery, for 1915, 15,000 gallons— Now, this is an old memorandum I have, and I think it is 61,000 gallons for 1916.

Judge WINN.—What is that, the Scandinavian Grocery?

The WITNESS.—Yes.

Judge WINN.—Well, that isn't in the bill of particulars.

The WITNESS.—Yes, it is.

Judge WINN.—1916?

The WITNESS.—Yes, sir. 750 gallons lubricating oil. Now on this, Judge Winn, I haven't just the memorandum I made at that particular time. I have 750 gallons for 19—lubricating oil for 1915, but I haven't it for 1916.

(Testimony of J. C. McBride.)

Mr. KELLEY.—To which we object, to his interjecting anything further into the bill of particulars.

The WITNESS.—Well, this isn't a copy.

Mr. KELLEY.—Better see what the original shows.

Q. (Handing bill of particulars to witness.) Just state that last item again, Mr. McBride—Scandinavian Grocery.

A. 15,000 gallons in 1915, 61,000 gallons in 1916 of refined oil; 750 gallons for each year of lubricating oil for 1915 and 1916; "El Nido," 1500 gallons each for the years 1915 and [92] 1916—

Judge WINN.—(Interrupting.) Now wait. If your Honor please, we object to the Scandinavian Grocery, 750 gallons for each year. He only has 750 gallons on the bill of particulars, for 1916, if this bill of particulars is correct. Did you say each year 750?

The WITNESS.—Yes.

The COURT.—Proceed.

A. Launch "Chlopeck," 2500 gallons of refined oil each for 1915 and 1916 and 125 gallons of lubricating oil for each of those two years; launch "Caesar," 1500 gallons each for 1915 and 1916, and 75 gallons of lubricating oil for those two years; launch "Dolphin," 3000 gallons for 1915 and 3500 for 1916, of refined oil; 150 gallons of lubricating oil for 1915 and 175 gallons for 1916; Tenakee Fisheries, in 1916, 3300 gallons of refined oil; in 1916 lubricating oil, 165 gallons; Northwestern

(Testimony of J. C. McBride.)

Fisheries, in 1916, 3300 gallons of refined oil and 165 gallons of lubricating oil in 1916; Astoria and Puget Sound Canning Co., for 1916, 30,000 gallons of refined oil and 1500 gallons of lubricating oil; in 1916, George Naud—no; that doesn't come in. That's all in 1915 and 1916.

Q. Now, Mr. McBride, I will ask you to refer to your memorandum again and ask you if you furnished any of the orders that you couldn't fill for the reason stated, to the Hoonah Packing Company at Gambier Bay? A. Yes, sir.

Q. In 1915 and 1916?

Mr. KELLEY.—Is that on your bill of particulars?

Mr. FAULKNER.—Yes. [93]

A. When?

Q. In 1915 and 1916? A. Yes, sir.

Q. How much? A. 50,000 gallons.

Q. No; I mean at Gambier Bay.

A. What is that?

Q. Gambier Bay; Hoonah Packing Company for 1915. A. 40,000.

Judge WINN.—No; there isn't any for 1915. You have got 40,000 on the bill of particulars for 1917.

Mr. FAULKNER.—Well, the witness will know.

Judge WINN.—He is bound by the bill of particulars.

The COURT.—Now, wait a moment. There is no use—

(Testimony of J. C. McBride.)

Judge WINN.—We object to that, if your Honor please, because it isn't in the bill of particulars.

Mr. FAULKNER.—I am asking him the question.

The COURT.—He has asked him the question. Now, you're objecting that it is not in the bill of particulars. I'll hear from you.

Mr. FAULKNER.—Maybe it isn't. I don't know. I'm just asking him to state.

Q. Did you have any orders from the Hoonah Packing Company in Gambier Bay, in 1915 and 1916? A. No, sir.

Q. Now, did you have any from the Auk Bay Salmon Canning Co., in those years, 1915 and 1916?

A. Auk Bay Salmon Company? No, sir.

Judge WINN.—The same objection. Well, he's answered it now.

Q. Now, did you have any from the launch "Chlopeck" in those [94] years?

Judge WINN.—That's been given.

Q. I don't mean the launch "Chlopeck." I mean the launch "El Nido."

A. For those two years?

Q. Yes. A. Yes, sir.

Q. How much?

A. 1500 gallons for each year.

Q. Of lub— A. (Interposing.) Refined oil.

Q. What lubricating oil, if any?

A. 75 gallons for each of those two years.

Q. Now, the Pillar Bay Packing Company, did

(Testimony of J. C. McBride.)

you have any orders from that company for the years 1915 and 1916? A. In 1916 I did.

Q. How much? A. 1650 gallons.

Q. How much lubricating oil? A. 821½ gallons.

Q. Now, Mr. McBride, what is that total, for those two years, of refined oil? Have you got the total there?

A. I have the total for each year.

Q. What is it?

A. In 1915 it was 211,200 gallons of refined oil, and in 1916 320,950; total of lubricating oil in 1915 was 10,560 and in 1916 it was 14,747 gallons.

Q. Now, did you have any orders for any of this— Oh, I might ask you this: Did you have any other orders—don't answer this until it is objected to— did you have any other [95] orders for oils during those years of 1915 and 1916, which you have not mentioned, which are not included in the bill of particulars?

Judge WINN.—We object to it as incompetent, irrelevant and immaterial. He is bound by the bill of particulars in this case and the bill of particulars makes up the amount of damages which he is suing for. To go into this, it is absolutely immaterial and not within the issues of the case for two reasons: first, he has not supplied us with a bill of particulars and second, it would be increasing his amount of damages, which he has asked for. He is bound by the bill of particulars.

Mr. FAULKNER.—If the Court please, I think that on the question of damages, under that branch,

(Testimony of J. C. McBride.)

under that theory of the case, damages for speculative or lost profits, that we can show more than is alleged in the bill of particulars and we can show approximations and estimations of what oil might have been sold. Now, I have some authorities on that point, and, in fact, there are several cases in point. Here is one that I have right before me that I might just read the last paragraph of.

The COURT.—I think I'll hear you on that. I'll excuse the jury now till to-morrow morning at ten o'clock.

(Whereupon the jury was excused.)

Judge WINN.—Well, now, if Mr. Faulkner is going to argue this question, I would like to enlarge my objection to it, because I thought the law absolutely governs, irrespective of what decisions Mr. Faulkner can find. I'll state that we object to it as irrelevant and immaterial and not within the issues of this case, and inasmuch as on our demand, a [96] bill of particulars was furnished, showing a list of those corporations whom they say they made sales to or contracted to make sales to, they could recover damages on that only. Now, then, if he goes beyond that, I wish to state to the Court that we are absolutely taken by surprise, because we have had no opportunity to investigate the matter at all; and added to it, of course, are the further objections that it is speculative and remote, uncertain and not such damages as can be recovered, and also it comes within the statute of frauds, and especially do I think, if your Honor please, that under the statute

(Testimony of J. C. McBride.)

he is bound by this statement he has given us here. This would be very pernicious testimony to go before the jury.

Mr. FAULKNER.—There is nothing pernicious about it. I offer to prove some other orders that are not in the bill of particulars. Of course, the bill necessarily had to be prepared from fragmentary pieces of information, from copies of letters that were sent into the Union Oil Company, ordering supplies, and so forth, and from the memory of Mr. McBride and other witnesses and from the memory of some of the men who would have purchased the oil; and at the time the bill of particulars was filed, we did the best we could. Since then we have learned of other orders, other positive orders that were given, and I offer at this time to prove those. Now, I think the law is that where a person can estimate his damages and can prove the amount of business he did in previous years and the condition of the trade, and so on, that he ought to be able to prove a specific instance of damages, where a specific order was given for a specific amount of oil. [97]

(Whereupon after argument, the Court ruled as follows.)

The COURT.—I'll permit the evidence to go in at the present time. I will hear you on the question of the statute of frauds, although I will say that so far as I am concerned, I'm inclined to be against you unless you can show me authorities that this

(Testimony of J. C. McBride.)

comes within the statute of frauds. Objection overruled. You will be allowed an exception.

(Adjournment taken until Saturday, January 20, 1922, at 10 o'clock A. M.) [98]

Saturday, January 20, 1923.

Court met pursuant to adjournment at 10 A. M.

J. C. McBRIDE on the witness-stand.

Direct Examination (Resumed).

Q. (By Mr. FAULKNER.) Mr. McBride, you gave us some items last night of oil that you could have sold in the years 1915 and 1916, according to the list that you have furnished. What was the total amount of that?

A. Well, I have to determine that.

Q. Have you totaled it up?

Judge WINN.—I think he gave that.

Mr. FAULKNER.—Not the total.

The COURT.—No; he didn't give the total at all. He stated that he had it by years, but not the total sums.

A. The total sum for 1915 and 1916 was, refined oil, 532,150 gallons, and the total sum for those same years for lubricating oils was 24,307 gallons.

Q. What, under the contract that you have mentioned having entered into with the company, would be your commissions on the refined oil during those two years?

A. It would be one cent a gallon on the refined oil.

(Testimony of J. C. McBride.)

Q. What would that amount to?

A. It would amount to \$5321.50.

Q. And the lubricating oil?

A. At two cents a gallon would be \$486.14.

Mr. KELLEY.—Now, just a moment. We move to strike out the answer and question as being contradictory to the written letter which is already in evidence.

The COURT.—Motion denied, except as to the—
In what way? [99]

Mr. KELLEY.—It differs with the commission. It wasn't two cents per gallon; it was ten per cent.

Mr. FAULKNER.—If the Court please, I might ask the witness one or two preliminary questions as to whether or not that ten per cent would not amount to more than that. But we have only claimed two cents. Ten per cent would make it considerably more. You can readily see that.

The COURT.—Yes; motion denied.

Q. I might ask you, Mr. McBride, you have testified that the commission on the lubricating oil—
Before we get to that, in order to complete it, what is the total of those two amounts?

A. \$5807.64, for 1915 and 1916.

Q. You have testified that the commission on lubricating oil for the years 1915 and 1916 was to be ten per cent of the price? A. Yes, sir.

Q. Now, would ten per cent amount to more than two cents a gallon? A. Yes, sir.

Q. How much more?

(Testimony of J. C. McBride.)

Judge WINN.—Object to that as immaterial. They have elected to stand on the other and the Court has just ruled that they can stand on it.

Mr. FAULKNER.—Very well. I just want to show that two cents per gallon comes within the ten per cent.

Q. Now, Mr. McBride, were there any other contracts for the sale of oil by you during those two years that you have not mentioned, that are not included in the bill of particulars? [100]

A. Yes, sir.

Judge WINN.—We object to it, if your Honor please, as incompetent, irrelevant and immaterial, and because it appears from the record in this case that the bill of particulars was demanded by the plaintiff from the defendant. As to what items they expected to charge us commission upon and what purported sales they desire to charge a commission upon, he furnished those and by doing so, the bill of particulars becomes a part of the pleadings. It is too late now to amend the pleadings again, and it is immaterial, and he is bound by the bill of particulars which he has furnished us. But as to the sales and as to any purported commissions that he may have claimed or may be entitled to in the case—

Mr. FAULKNER.—Would the Court like to hear from me on that?

The COURT.—Objection overruled. He may answer.

Mr. KELLEY.—Exception.

(Testimony of J. C. McBride.)

Q. Just answer that question yes or no.

A. Yes, sir.

Q. Now can you give us any items that were not mentioned in your testimony yesterday and are not included in the bill of particulars.

Judge WINN.—The same objection to this question, if your Honor please.

The COURT.—Overruled.

Judge WINN.—Yes; allow us an exception.

A. Orders from Mr. Bayers.

Q. What would that order amount to, Mr. McBride?

Judge WINN.—The same objection to each one of these questions, if your Honor please. [101]

A. Five hundred drums.

Mr. KELLEY.—Just a minute. What was his name?

A. Tay Bayers; H. G. Bayers; B-a-y-e-r-s.

Q. How many gallons would be in a drum?

A. Well, approximately a hundred and five; approximately from 105 to 110.

Q. And that 105 gallons to the drum, as a matter of computation, would be how many gallons? What would 500 drums amount to?

Judge WINN.—The same objection, if your Honor please.

The COURT.—Overruled.

A. It would be 52,500 gallons.

Q. Was any part of that order filled?

A. No, sir.

(Testimony of J. C. McBride.)

Q. Did you have any portion of that order in writing? A. Yes, sir.

Q. I hand you a letter dated January 4, 1916, and ask you whose signature that is?

A. That is Tay Bayers' signature.

Q. That is just preliminary. And I hand you a letter dated February 21, 1916, and ask you whose signature that is? A. Tay Bayers'.

Mr. KELLEY.—Just a minute—

Mr. FAULKNER.—We offer that in evidence first.

Judge WINN.—We object to the letter as being incompetent and immaterial, irrelevant, and not binding upon the plaintiff company in this case, and pertains to a certain kind of a contract or agreement, which under no circumstances would we be bound by under the testimony in this case so [102] far advanced.

Mr. FAULKNER.—That is simply preliminary.

Judge WINN.—And, of course, urging the same objection that it is not anything that is included in the bill of particulars that they are bound by and that they furnished when we demanded it.

The COURT.—I'm inclined to sustain the objection to that letter, because it is simply preliminary negotiations.

Mr. FAULKNER.—Well, the next letter is the one.

Judge WINN.—As I understand it, is counsel going to offer them as one exhibit?

Mr. FAULKNER.—It might be the best way.

(Testimony of J. C. McBride.)

Judge WINN.—In other words, it all pertains to the same matter.

Mr. FAULKNER.—Yes.

Judge WINN.—Then, we can get all the letters together and see whether the whole—

Mr. FAULKNER.—Well, I might, then, identify this one and then we'll have the whole thing.

Q. Whose signature is that?

A. That is Tay Bayers'.

Q. Letter of what date? A. March 6, 1916.

Judge WINN.—We urge an objection to each one of those letters separately and to the letters combined, on the ground that they are immaterial and irrelevant. They don't tend to prove any issues set forth in the pleadings, and pertain to matters that the defendant did not furnish us in any bill of particulars, which he furnished in this case, [103] and they are not such sales as, if they are legal and binding in any respect at all, under certain circumstances they would not be legal and binding upon the plaintiff company in this case so far as the evidence now stands, under the testimony that has been offered on the part of the defendant; and, of course, there is still the objection that it is remote, uncertain, prospective damages, if any damages accrued from it.

Mr. FAULKNER.—Of course, the whole transaction cannot be brought out in one question. I intend to follow it up by asking the witness further questions.

The COURT.—Well, so far as this is concerned, I will sustain the objection. It appears to me that

(Testimony of J. C. McBride.)

this is simply a contract to be entered into between Mr. Bayers and Mr. McBride, that Mr. Bayers acted as subagent for the property, not as a buyer under the contract such as claimed in your answer. There is no subagency allowed.

Mr. FAULKNER.—If the Court please, I don't like to argue the question after the Court has ruled on it, but I would like to call your attention to one thing, and that is, I claim that under this contract the Union Oil Company agreed to furnish the defendant with oil in sufficient quantity to meet the requirements of the trade. Now, we propose to show by these letters and the testimony that will follow, that this would have been a part of the trade. They were shut off from this portion of the trade by reason of not having been able to furnish any oil to Mr. Bayers at all. And I want to call the Court's attention to the last letter. Well, I may withdraw that and put that letter in later. I think I can show there that Mr. Bayers came in [104] specifically for a load of oil, but we would ask an exception to the Court's ruling and particularly to the Court's ruling as to the letter of February 21, 1916. The letters have all been identified. We'll offer them in evidence and ask an exception.

The COURT.—You do offer them in evidence?

Mr. FAULKNER.—I want to get it into the record.

Q. Now, Mr. McBride, did you sell any oil to Mr. Bayers? A. No, sir.

Q. Did he come to the Union Oil Company for any specific order of oil?

Judge WINN.—The same objection, if your Honor please, upon the ground that any purported sale that he says he was going to make to Mr. Bayers would not come under any contract that the defendant had with the plaintiff to furnish any oil. It is irrelevant and immaterial and it is not included within the bill of particulars filed in this case. It is remote, uncertain and prospective profits, for which no recovery could be had.

Mr. FAULKNER.—If the Court please, I would like to be heard a minute on that.

Judge WINN.—And comes within the statute of frauds.

Mr. FAULKNER.—Here is a contract for furnishing Mr. McBride with enough oil to meet his trade. Now, under that contract he was to make a settlement with the Union Oil Company for all the oil, and he was to be responsible for the sales. The testimony shows that they were to furnish him with sufficient oil to meet the trade, and he worked up a trade and was responsible for the oil that was sold. [105]

The COURT.—You can show where you sold oil, but not from a subagency.

Mr. FAULKNER.—I wouldn't consider this to be a subagency. It would be prospective sales. Of course, they didn't make any of these sales, because they didn't have the oil.

The COURT.—Suppose I was acting for the Clerk here and I have a lot of groceries and you came in to me and said, "Here, I can take these groceries out into the country and sell them."

(Testimony of J. C. McBride.)

Well; now, that isn't a sale. That is simply taking it out on a chance of sale. The commissions are on the sales that Mr. McBride would make, not on deliveries to a subagency.

Mr. FAULKNER.—So far as this question goes to this, this is a sale.

The COURT.—If you can show an order of purchase of property—

Mr. FAULKNER.—That is what this question is and it is objected to now.

Judge WINN.—Well, I might ask Mr. Faulkner if it isn't a fact that what he is going to question the witness about is concerning these letters, and so forth, that he tendered in evidence.

Mr. FAULKNER.—No.

Judge WINN.—It is not?

Mr. FAULKNER.—No.

Judge WINN.—Well, then,—I still object.

The COURT.—Repeat the question. (Following question repeated by the reporter.) “Did he come to the Union Oil Company for any specific order of oil”?

A. Yes, sir.

Q. In what year? [106] A. 1916.

Q. Do you remember how many drums he came for?

Judge WINN.—The same objection, if your Honor please.

The COURT.—Objection overruled.

Q. How many? A. Fifty drums.

Q. How many gallons would that be as a matter of computation?

(Testimony of J. C. McBride.)

Judge WINN.—The same objection, if your Honor please.

The COURT.—Objection overruled.

A. Well, it is—I can't figure that in my head. 5,250 gallons.

Q. That is of refined oil?

A. Refined oil; yes, sir.

Q. Now, Mr. McBride, you have stated that during the period from 1915 to 1916 you didn't get enough oil to supply your trade.

A. Yes, sir.

Q. Did you notify the Union Oil Company of that? A. Yes, sir.

Q. Did you notify the Union Oil Company of that? A. Yes, sir.

Q. Did you have any promises from them regarding—

Judge WINN.—Wait a minute. May I ask a preliminary question—whether it was in writing or oral.

The COURT.—I suppose he is going to follow this up. I believe it is simply preliminary.

Judge WINN.—Well, if he did give notice first, I would like to know whether it is in writing or oral.

The COURT.—This is preliminary. He may answer. Did you receive any answer? [107]

(Question repeated at request of the Court.)

Q. Did you have any promise from them regarding the future? A. Yes.

Judge WINN.—We make the same objection

(Testimony of J. C. McBride.)

and also ask that we have the privilege of asking whether such promise was in writing or oral.

Mr. FAULKNER.—Well, we'll show that.

Q. Now, Mr. McBride, in 1917— Oh, I might ask you this, during the years 1915 and 1916, did you maintain your equipment for the sale of these oils at all times? A. Yes, sir.

Q. Did you maintain a force to sell the oil?

Judge WINN.—Object to it.

Q. And everything that is necessary.

Judge WINN.—It is incompetent, irrelevant and immaterial, about any force. There is nothing alleged in the pleadings about any force.

Mr. FAULKNER.—I think perhaps it would be a question for the plaintiff to deny, to show otherwise by their evidence, but I think that we ought to be allowed to pursue it.

The COURT.—He may answer. Objection overruled.

A. Yes.

The COURT.—The word “facilities,” facilities for the delivery of the oil covers the word force.

Q. Did you maintain the equipment and facilities for the whole period.

Judge WINN.—The same objection.

A. Yes, sir.

The COURT.—Objection overruled. [108]

Q. Now, Mr. McBride, I will ask you if in 1917 you had any communications or correspondence with the Union Oil Company regarding this contract—early in 1917. Did you have any correspondence with them? A. Yes, sir.

(Testimony of J. C. McBride.)

Q. Now, what was done with reference to a contract in 1917, in the early part of 1917, if anything?

A. We made a written contract in 1917.

Q. Now, where was that contract prepared?

A. The contract was prepared in Seattle.

Q. You remember when that was signed?

A. I think it was signed in the middle of the year.

Q. About the middle of the year. A. Yes, sir.

Q. And the contract was dated February 14, 1917? A. Yes, sir.

Q. Was that the correct date?

A. That was the—

Q. (Interrupting.) Was that the date when it was signed, or was it signed later?

A. It was signed later.

Q. Did the Union Oil Company send you that contract to Juneau? A. Yes, sir.

Q. And when you received it, did you have any communication from them regarding it?

A. Yes, sir.

Q. Did you read them? A. Yes, sir.

The COURT.—What is the purpose of this?

Mr. FAULKNER.—What is that? [109]

The COURT.—What is the purpose of this?

Mr. FAULKNER.—To show the interpretation of the contract; to show the letter of the Union Oil Company, interpreting particularly one clause in there, which might be of—

The COURT.—Wait a moment, now.

Judge WINN.—Of course, we can't object until we see the letter.

(Testimony of J. C. McBride.)

Q. I will ask you if that is the letter you wrote (handing letter to witness)? A. Yes, sir.

Mr. FAULKNER.—We'll offer it in evidence.

Judge WINN.—Did you offer this in evidence?

Mr. FAULKNER.—Yes.

Judge WINN.—We object, if your Honor please, to the introduction of this letter on the ground that it is a self-serving declaration, and it is incompetent, irrelevant and immaterial and not the best evidence. There has been no foundation laid for it. The terms and conditions of the 1917 contract were complete and perfect in their terms and it was signed by the respective parties—no fraud, mistake or anything alleged to attack the contract. Hence, if this is the contract that they are suing upon, which is admitted, this is absolutely immaterial, incompetent and irrelevant in the case and no foundation laid for the introduction of it.

Mr. FAULKNER.—If the Court please, there are several other things in those letters which, I think, are material, which the Court can readily see; no use of my stating—

Mr. KELLEY.—I would suggest that you offer the letter, [110] that you offer all the letters for identification, and then offer them in evidence all at once, if they all pertain to each other.

Mr. FAULKNER.—This (indicating) is an answer to that.

The COURT.—Well, then, this letter and the answer should be construed together.

Q. Did you receive any answer to the letter of March 21, 1917, which I have just handed to you?

(Testimony of J. C. McBride.)

A. Yes, sir.

Q. From the Union Oil Company? A. Yes, sir.

Q. I'll hand you another letter, Mr. McBride, and ask you if you have seen that before?

A. Yes, sir.

Q. Whose signature is on that letter?

A. Mr. Kelly's.

Q. Who is Mr. Kelly?

A. Mr. Kelly is the district sales manager for the Union Oil Company in Seattle.

Q. Where did you receive that?

A. Here at Juneau.

Q. From whom? A. The Union Oil Company.

Q. We'll offer the two in evidence.

Judge WINN.—Are you offering it, or do you—

Mr. FAULKNER.—We offer both of them.

Judge WINN.—We object. You mean together?

Mr. FAULKNER.—Yes, if that is more convenient. I don't want the Court to reject both of them if one is all right.

Mr. KELLEY.—May I ask the Court the date of that letter? [111]

The COURT.—March 21st.

Judge WINN.—We urge the same objection to this last letter which we just urged to the other letter, and object to each one separately and combined.

(Objection repeated at request of Court.)

Mr. FAULKNER.—On that objection, I would like to be heard particularly as to the last letter. The Court has read the letter and will note there are several clauses in that letter, interpreting the

clauses of the contract, which perhaps didn't need much interpretation, but there is one in particular to which I wish to call the Court's attention, which designates the territory.

Judge WINN.—I desire to object to counsel's stating what the letter contains until they offer it and it is received in evidence.

Mr. FAULKNER.—I'm not stating that.

The COURT.—Is your sole purpose of introducing this with reference to the negotiations leading up and preliminary to the entering of the contract of February 14, 1917? Or is it also to corroborate certain statements as to the price to be given for oil?

Mr. FAULKNER.—I don't think there is any contest on that. The prices I think are agreed upon. The purpose of the letter is to show the arrangement made between the two companies, interpreting the terms of the contract. There is one provision in the letter to the company from Mr. McBride that counsel might object to, under the ruling of the Court, and that is regarding the cost of the facilities, and I just want to tell the Court that I am not offering that [112] letter for the purpose of getting it before the jury. It has already been ruled on. Simply mentions the word "facilities."

Judge WINN.—Interprets two clauses of the contract, as to the meaning of the word "Juneau."

Mr. FAULKNER.—And it also shows when the contract was signed; that is, it shows it was signed after a certain date; not on February 14, 1917.

The COURT.—I think I'll overrule the objection under the conditions stated.

Mr. KELLEY.—Do I understand counsel to state that he is offering it for the purpose of defining what is meant by the word "Juneau"?

Mr. FAULKNER.—That is one purpose.

Mr. KELLEY.—Now, we will admit it for that purpose, that it defines what is meant by Juneau, but I would read just that paragraph,

Mr. FAULKNER.—No, that is not the only one.

Mr. KELLEY.—Then, what other purpose is there?

Mr. FAULKNER.—There is another paragraph here that I think is very material. I want to pick it out. And I want to offer that for the reason that the contract of 1915 and 1916 is denied by the plaintiff.

The COURT.—Yes.

Mr. KELLEY.—I don't think that the entire letter should be read, but simply those portions which pertain to the purposes that he has stated. In other words, there is the proposition that your Honor ruled on yesterday that shouldn't be raised at this time. [113]

The COURT.—Probably so. You can read those portions of the letter.

Mr. FAULKNER.—This is the letter of March 21, 1917—

Judge WINN.—Of course, to those respective portions, we make the same objections that we did

to the original letter. Now, we desire to suggest that if he is going to introduce the letter that he read only such portions as the Court has admitted. Now, I object even to the certain portions. The ruling before was on the entire letter. Now I simply object to these portions that he is going to read. They are not material.

(Following statement repeated by reporter at request of Mr. Kelley:)

“Mr. KELLEY.—Now, we will admit it for that purpose, that it defines what is meant by Juneau, but I would read just that paragraph.”

Mr. KELLEY.—We will admit that the construction of Juneau is as stated in this letter.

Judge WINN.—I think it is admitted in the pleadings.

The COURT.—No.

Mr. KELLEY.—We'll admit the construction that is placed in this letter on the definition of what is meant by Juneau in the contract as correct. In other words, we're not going to be bound by the city.

The COURT.—Objection overruled. He may read those portions.

Mr. FAULKNER.—The two portions of both letters.

The COURT.—What?

Mr. FAULKNER.—In the first letter of Mr. McBride he inquires about that.

Judge WINN.—That isn't material.

Mr. FAULKNER.—Oh, I don't think so either. I don't care to read that. I don't believe that's necessary. But in [114] this letter—I'll just show the Court what paragraphs I will read.

The COURT.—You're entitled to read those two. Nothing material in the other portions of the letter, except that portion as to the construction of the territory.

Mr. FAULKNER.—Now, there is another clause which refers to the former contract.

The COURT.—Yes, you can read that.

Mr. FAULKNER.—This is the letter of May the eighth, 1917, dated at Seattle, Wash. (Reads:)

“C. W. Young Co.,

“Juneau, Alaska.

“Attention Mr. McBride

“Gentlemen:

* * * * *

“In designating the territory as Juneau, we do so with the understanding that you are to receive commissions on all oils sold from Juneau stocks. We could not define the territory more definitely, for the reason, as you know, we make certain shipments from Seattle stocks on which you would be entitled to no commission.

“This agreement, as far as territory is concerned, is no change from agreement under which you have been acting. Any oil that you are able to sell and deliver from your Juneau stock, commissions will be paid you.”

And the last paragraph is this:

(Testimony of J. C. McBride.)

“In regard to clause No. 11, on the subject of compensation we are pleased to state that we have secured the permission of our head office to grant you a commission of 2 cents per gallon on lubricating oils and $1\frac{1}{2}\text{¢}$ per pound on grease. We hope that you will appreciate our efforts [115] in this connection, when we state that such commissions as we are allowing you as in this instance, are not allowed to any one else handling our oils. The commission of 1¢ per gallon on refined oil is the same as you have been receiving.”

Q. Now, Mr. McBride, I'll hand you another letter, dated June 12, 1917, and ask you if you have seen that before? A. Yes, sir.

Q. Where did you receive that? From whom did you receive it? A. Union Oil Company.

Q. Whose signature is that? A. Mr. Clagett's.

Q. Now, I will offer that letter in evidence. The only purpose of this is to show the date of the signing of the new contract. It isn't very material.

Judge WINN.—We make the same objection to this letter that we have made before.

The COURT.—Simply to show that the contract was signed?

Mr. FAULKNER.—If it is objected to, I will withdraw it. Did you make an objection?

Judge WINN.—The same objection as to the other.

Mr. FAULKNER.—All right; I'll withdraw it.

Q. Now, Mr. McBride, I will ask you to refer to your memorandum and I will ask you this question.

(Testimony of J. C. McBride.)

Did you maintain the same facilities for the sale of the oil during the year 1917 and up to August 24, 1918, that you had previous to that time?

A. Yes, sir.

Q. You had the same equipment, did you?

A. Yes, sir. [116]

Q. Did you have any designation on the buildings where the oil was stored? A. Yes, sir.

Judge WINN.—Object to it as immaterial.

Q. What did you have on the building? Don't answer this until they have had a chance to object.

A. I advertised on the roof that it was the Union Oil Company.

Q. Now, during the year 1917, did you have any orders for the sale of oils, or any business procured for oil that you could not furnish?

A. Yes, sir.

Q. Now, just refer to your memorandum and tell us what those items were. Have you got those?

A. I handed it back to you.

Q. I just wanted to have something to check up with. Now, will you give us those items?

Judge WINN.—Without repeating the objection, it goes to all this, because this runs over the same number of lists and corporations and individuals that he ran over for 1915 and 1916, with possibly one or two exceptions. We also urge the objection that the evidence is immaterial, irrelevant and incompetent and that there is no foundation laid for it. It does not tend to prove any issues in the case as set forth under the pleadings that we're trying

(Testimony of J. C. McBride.)

the case on. The damages sought to be recovered are remote and speculative and uncertain, and of such a nature that you cannot predicate a suit upon them. Another thing is that these orders come within the statute of frauds, because at the present time they have introduced a letter here which shows the different prices of oils, and so forth, which they [117] sold, and we urge that objection again. The agreement, if it is an agreement, comes within the statute of frauds and is not enforceable.

The COURT.—Objection overruled.

(Question repeated by reporter at request of Mr. Faulkner.)

Q. For the year 1917.

A. Hoonah Packing Company, Hoonah, in 1917, refined oil, 50,000 gallons, and lubricating oil for the same year, 2500 gallons; Hoonah Packing Company, Gambier Bay, 1917, refined oil, 40,000 gallons; for the same year lubricating oil, 2,000 gallons; Taku Canning & Cold Storage Company, 1917, 40,000 gallons of lubricating oil, of refined oil I mean, and for the same year, 2,000 gallons of lubricating oil; Chichagoff Mining Company, 1917, 25,000 gallons of refined oil, and lubricating oil for the same year, 1250 gallons; Auk Bay Salmon Canning Company, 1917, 30,000 gallons of refined oil and 1500 gallons of lubricating oil for 1917; National Independent Fisheries, 20,000 gallons refined oil in 1917, and 1,000 gallons of lubricating oil for the same year; Pacific American Fisheries Company 30,000 gallons of refined oil and 1500 gallons of

(Testimony of J. C. McBride.)

lubricating oil for the same year; James Davis, 1917, 15,000 gallons of refined oil and 750 gallons of lubricating oil; Hunter & Dickinson, 5,000 gallons of refined oil for 1917, as well as 250 gallons of lubricating oil; launch "Rolfe," 2,000 gallons of refined oil in 1917 and a hundred gallons of lubricating oils; launch "Tillacum," a thousand gallons of refined oil and fifty gallons of lubricating oil, in 1917—

You needn't mention the year. That's all for the same year. Tillacum was the last. Anita Phillips, 3,000 gallons of [118] refined oil, 150 gallons of lubricating oil; Pete Madsen, 2500 gallons of refined oil and 125 gallons of lubricating oil; launch "Morengen," 5,000 gallons—

Mr. KELLEY.—(Interrupting.) May it please your Honor, I want to call Mr. McBride's attention to the fact that he misread the amount of lubricating oil for Pete Madsen. I think you read it 150 and it is 125.

A. Yes; I evidently read the one above; 125. Launch "Morengen" 5,000 gallons of refined oil and 250 of lubricating; Gypsy, 200 gallons of refined oil and 10 gallons of lubricating oil; launch "Pacific," 5,000 gallons of refined oil and 250 gallons of lubricating oil; launch "Olga," 2,500 gallons of refined oil and 125 gallons of lubricating oil; launch "Orien," 4,000 gallons of refined oil and 200 gallons of lubricating oil; launch "El Nido," 1500 gallons of refined oil and 75 gallons of lubricating oil; launch "Chlopeck," 2500 gallons of refined oil

(Testimony of J. C. McBride.)

and 125 gallons of lubricating oil; launch "Caesar," 1500 gallons of refined oil and 75 gallons of lubricating oil; launch "Dolphin," 3500 gallons of refined oil and 175 gallons of lubricating oil; Pillar Bay Packing Company, 1650 gallons—

Mr. KELLEY.—Just a minute, may it please the Court. Now that was in 1916. That doesn't belong in 1917. The next for 1917 in this list is the Astoria & Puget Sound Canning Company.

A. That's right, that doesn't belong in 1917. Astoria & Puget Sound Canning Company, 30,000 gallons of refined oil and 1500 gallons of lubricating oil; George Naud, 8,000 gallons of refined oil and 400 gallons of lubricating oil; Valdez [119] Packing Company, 19,320 gallons of refined oil and 960 gallons of lubricating oil; Icy Straits Packing Company, 30,000 gallons of refined oil and 1500 gallons of lubricating oil.

Q. Did you have any order for the sale of oil to the launch Carita for the year 1917? A. Carita?

Q. Yes.

Mr. KELLEY.—He read that.

Mr. FAULKNER.—Did he?

Mr. KELLEY.—Yes.

Q. Have you any to the Scandinavian Grocery?

A. No, sir.

Q. You had nothing on there to the Scandinavian Grocery for 1917? A. No, sir.

Q. What does that total, for the refined oil?

A. 379,020 gallons.

Q. That is refined oil? A. That is refined oil.

(Testimony of J. C. McBride.)

Q. And what would be the commissions at one cent a gallon? A. It would be \$3790.20.

Q. And the lubricating oil, what would be the total amount of lubricating oil?

A. 18,951 gallons.

Q. What would be the commissions on that?

A. It would be two cents a gallon, \$379.02.

Q. And then the total of the two items, \$379.02 and \$3790.20 is what?

A. The total is \$4169.22. [120]

Q. \$4169.22. Did you make any of these sales mentioned? A. No, sir.

Q. Why?

Judge WINN.—The same objection, if your Honor please, that we made to the last question.

The COURT.—Objection overruled.

A. I didn't have the oil.

Q. Did you order the oil from the Union Oil Company? A. Yes, sir.

Q. Did you order the oil—

Judge WINN.—Wait; wait. May I ask a preliminary question, if your Honor please, as to whether it is in writing or oral?

The COURT.—Oh, yes.

Judge WINN.—Was your order in writing or oral?

The WITNESS.—Writing.

Judge WINN.—You have that writing, have you?

A. Yes, sir.

Judge WINN.—We object to the question, then, because it is not the best evidence.

(Testimony of J. C. McBride.)

The COURT.—Objection overruled. Simply a preliminary question.

Q. Mr. McBride, you said you ordered it from the Union Oil Company? A. Yes, sir.

Q. Did you order the oil mentioned last night in writing—

Judge WINN.—The same objection. It's not the best evidence. He has stated that these orders are not in writing.

Q. Did you order the oils mentioned in your testimony yesterday that you could have sold in 1915 and 1916 if you had them [121] on hand?

Judge WINN.—The same objection.

The COURT.—Objection overruled.

A. Yes, sir.

Q. From the Union Oil Company?

A. Yes, sir.

Q. Did you procure the oil from the Union Oil Company? A. No, sir.

Q. You have mentioned in your answer certain oil that could have been sold to the Astoria & Puget Sound Canning Company? A. Yes, sir.

Q. Did you have any correspondence from the Union Oil Company regarding this particular business with the Astoria & Puget Sound Canning Company at any time during the life of this contract or contracts? A. Yes, sir.

Q. I'll hand you a letter and ask you if you have seen that letter before. A. Yes, sir.

Q. Where did you receive that? From whom did you receive it?

(Testimony of J. C. McBride.)

A. From the Union Oil Company.

Q. Whose name is signed to that?

A. Clagett. Clagett was the district manager.

Q. We'll offer that letter in evidence.

Judge WINN.—Yes, we object to this letter, if your Honor please. It was written in 1916, 1915. There is nothing in the bill of particulars claiming any damages on any order from this particular company for that year.

Mr. FAULKNER.—That is true, your Honor.
[122]

Judge WINN.—And we urge the same objection to this that we urged to the other letter heretofore introduced, without repeating the objection.

Mr. FAULKNER.—Simply cumulative evidence on the failure of the Union Oil Company to furnish the oil, and cumulative evidence on the fact that they could have sold oil to this particular cannery.

Judge WINN.—And they haven't sued for it.

Mr. KELLEY.—That doesn't say anything about it.

Judge WINN.—And then the contract provides for these wholesale deals to be made with the canneries from the Seattle office as well, and there is nothing in the pleadings; no claim made in the bill of particulars; no claim for damages on this transaction made in the bill of particulars here.

Mr. FAULKNER.—Bearing on the question, on Mr. McBride's testimony on the question of getting orders.

The COURT.—I hardly think it is competent. This is the year 1915?

Mr. FAULKNER.—Yes; but it mentions the next year. This letter bears out the testimony of Mr. McBride. It tells him to go after that particular business. It simply corroborates his testimony to that extent. That is the only purpose for which it is offered.

The COURT.—Oh, it may be received and filed. Objection overruled.

Mr. FAULKNER.—I'll read this to the jury. (Reads:)

Defendant's Exhibit "B."

“Seattle, Wash., April 2, 1915.

“Personal.

“Attention Mr. McBride. [123]

“C. W. Young Co.,

“Juneau, Alaska.

“Gentlemen:

“In conversation with Mr. Dan Campbell to-day, of the Astoria & Puget Sound Canning Co., he states he gave the Standard Oil Co. his business this year for refined oils at their Alaska cannery, for the reason that the Standard was able to make deliveries from Juneau.

“I understand that our mutual friend, Mr. Bell, has the placing of these orders, and I believe if you get after him, Mr. Bell will see to it that you get a good share of this business. Do not understand me, however, to infer that this comes from Mr.

(Testimony of J. C. McBride.)

Campbell. Mr. Bell, I understand, is a good friend of yours. You can quote him 1/2¢ off refined oils in drums.

“Yours truly,
“GEO. D. CLAGETT,
B. M.,
“District Manager.”

(Whereupon foregoing letter was received in evidence and marked Defendant's Exhibit “B.”)

Q. Now, Mr. McBride, you have mentioned, in your testimony, certain oils that could have been sold to the Chichagoff Mining Company in the years 1916 and 1917, which was not delivered. Now, I will ask you if you had any correspondence from the Union Oil Company regarding this particular business? A. Yes, sir.

Q. I'll hand you a letter, dated May 17, 1915, and ask you from whom you received that.

A. From the Union Oil Company. [124]

Q. And who signed that?

A. George Clagett, District Manager.

Q. Did you receive that in Juneau?

A. Yes, sir.

Q. We'll offer that in evidence.

Judge WINN.—We urge the same objection to this letter, if your Honor please. You will notice that it is dated on May 17. The same objection that we made to the other letters. We don't want to burden the record by repeating it.

The COURT.—Is this one of the companies that they couldn't supply?

(Testimony of J. C. McBride.)

Mr. FAULKNER.—Yes.

The COURT.—Objection overruled.

(Whereupon letter mentioned was received in evidence and marked defendant's Exhibit "C.")

Mr. FAULKNER.—I'll read it. (Reads:)

Defendant's Exhibit "C."

Seattle, Wash., May 17, 1915.

C. W. Young Company,
Juneau, Alaska.

Gentlemen:

The Chichagoff Mining Company, at Chichagoff, Alaska, are going to use distillate for the operation of their launch, and we are informed they will require from 800 to 1000 gallons per week. The supply is to be taken from your stock at Juneau.

We wish to inquire if you have measuring tanks on the dock of sufficient size so that delivery can be made without much delay. Will you kindly let us know in regard to this at your convenience; and also arrange to see that the requirements for this boat are well taken care of.

Very truly yours,

UNION OIL COMPANY OF CALIFORNIA.

By GEO. D. CLAGETT,

JCC.

District Manager. [125]

Q. I'll hand you another letter, dated May 22, 1915, and ask you if you wrote that?

A. Yes, sir.

Mr. FAULKNER.—We'll offer this. We offer the whole letter but there is only one portion that is pertinent. If there is any objection to the remainder, I'll withdraw the first two paragraphs.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial; no foundation laid for the introduction of the paragraphs which Mr. Faulkner seeks to introduce in this case and that it tends to prove, if it tends to prove anything, such damages as are speculative, uncertain, remote and as cannot be recovered in this case, and the statute of frauds applies to all these contracts, because the contracts are over \$500 in value—nothing to make it binding under the statute.

The COURT.—Objection overruled. It may be received.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "D.")

Mr. FAULKNER.—I'll only read the fourth paragraph. (Reads:)

Defendant's Exhibit "D."

May 22, 1915.

Union Oil Company,
Seattle, Wash.

Gentlemen:

* * * * *

We have had several talks with Mr. James Freeburn, superintendent of the Chichagoff Gold Mining Company, regarding his distillate supply and have made him several inducements relative to wharf-

(Testimony of J. C. McBride.)

age and so forth for his concentrates and supplies, which he might bring north and we are glad to see that we have secured this distillate contract, and if he uses about one thousand gallons per week, we will make arrangements whereby we will see that he is never short. [126]

* * * * *

Yours very truly,

C. W. YOUNG COMPANY.

Q. Now, Mr. McBride, I'll hand you another letter dated June 21st, 1915, and ask you from whom you received that.

A. Union Oil Company; George Clagett, manager.

Mr. FAULKNER.—I offer that in evidence for the same purpose.

Judge WINN.—We urge the same objection to this letter, if your Honor please, as to the others, and because the matters therein referred to are uncertain—throw no particular light upon the matters at issue in this case.

The COURT.—Oh, it may be received.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "E.")

Defendant's Exhibit "E."

Seattle, Wash., June 21, 1915.

C. W. Young Co.,

Juneau, Alaska.

(Attention Mr. McBride.)

Gentlemen:

In talking with Mr. Duncan this morning, of the

(Testimony of J. C. McBride.)

Chichagoff Mining Company, he stated that their new boat would be ready for distillate about July 8th, and that if our facilities at Juneau are as good as the Standard Oil Company's that we will get the business.

It will take about 2500 gallons of distillate per month, and the boat will call about every six days, taking 600 to 800 gallons at a time.

He will call on you in the near future relative to the lubricating oil requirements of this boat as well.

I am looking forward to being able to make a trip to Juneau sometime next month, at which time I hope Mr. Sclater, our Vice-President and General Manager will accompany me, just as soon as I can so arrange.

Yours very truly,

UNION OIL COMPANY OF CALIFORNIA,

GEO. D. CLAGETT,

District Manager. [127]

Q. Now, Mr. McBride, did you have any conversation with Mr. James Freeburn regarding—the superintendent of the Chichagoff Mining Company—regarding this oil contract with the Chichagoff Company? A. Yes.

Q. Were you able to furnish them with the oil?

A. No, sir.

Judge WINN.—The same objection we made to the others, as being speculative damages and coming under the statute of frauds; irrelevant and immaterial.

(Testimony of J. C. McBride.)

The COURT.—Objection overruled.

Judge WINN.—And the conversation would be hearsay.

Q. Mr. Freeburn promised you the business?

A. Yes, sir.

Judge WINN.—The same objection, if your Honor please.

The COURT.—Objection overruled.

Q. Now, I'll hand you another letter and ask you from whom you received that?

A. From F. O. Burckhardt of the Alaska-Pacific Fisheries.

Q. What date? A. May 27th, 1915.

Mr. FAULKNER.—I'll state to the Court that it is a letter outside of the bill of particulars, regarding the sale of oils not mentioned in the bill of particulars. It is simply preliminary.

Judge WINN.—I don't see that it is material for any purpose whatsoever under the ruling of the court.

The COURT.—Yes, I think—

Mr. FAULKNER.—Shows a demand for oil.

[128]

The COURT.—Simply an inquiry.

Mr. FAULKNER.—It shows a demand for the oil.

Judge WINN.—You offer it?

Mr. FAULKNER.—Yes, I offer it.

Judge WINN.—We make the same objection.

The COURT.—Objection sustained.

Mr. FAULKNER.—Very well.

(Testimony of J. C. McBride.)

The COURT.—Doesn't tend to prove anything.

Q. Mr. McBride, in making these orders, sending these orders to the Union Oil Company, how did you usually send your orders in what manner?

A. Mostly by cable.

Q. By telegram? A. Telegram or telegraph.

Q. And did you notify the Union Oil Company of these shortages from time to time as you required the oil?

Judge WINN.—Object to it as not the best evidence. If he notified them by telegram or writing, that is the best evidence.

The COURT.—Objection overruled. Simply preliminary. A. Yes, sir.

Q. Did you notify them? A. Yes, sir.

Q. Now, I'll hand you a telegram marked, or dated June 30, 1917, and ask you if you sent that telegram? A. Yes, sir.

Q. To whom?

A. To the Union Oil Company at Seattle, Wash.

Q. I offer that in evidence. [129]

Judge WINN.—We object to it as incompetent, irrelevant and immaterial, and no foundation laid for the introduction of it. It also doesn't come within any territory that was pretended to be claimed or allotted to Mr. McBride.

The COURT.—Objection overruled.

Mr. KELLEY.—Exception.

The COURT.—Exception allowed.

(Whereupon said telegram was received in evidence and marked Defendant's Exhibit "F.")

(Testimony of J. C. McBride.)

Mr. KELLEY.—I would like to know whether there are any other telegrams in connection with that very same thing.

Mr. FAULKNER.—Here (exhibiting) is one.

Mr. KELLEY.—Let's have them all. Let's have all of them that pertain to the same transaction.

Mr. FAULKNER.—That's all I think we have.

Mr. KELLEY.—We think all this ought to be introduced at once. Let's get it all before the jury at the same time.

The COURT.—Well, the first telegram has been admitted in evidence.

Q. You say you sent this to the Union Oil Company? A. Yes, sir.

Q. This Defendant's Exhibit "F"?

A. Yes, sir.

(Defendant's Exhibit "F" read by Mr. Faulkner, as follows:)

Defendant's Exhibit "F."

Juneau, Alaska, June 30, 1917.

Union Oil Company,

Seattle, Washington.

We have on hand one hundred eighty-four drums distillate. Does not include Valdez Packing Company purchase. Have order for one hundred fifty drums distillate for outside business, but do not want to let this go unless we are assured of immediate shipment, as we are again getting back local business due to supply on hand. Answer immediately. Important.

C. W. YOUNG CO. [130]

(Testimony of J. C. McBride.)

Q. Here are two telegrams, Mr. McBride, which I'll hand you, dated June 17 and June 23, 1917. No, I can't do that either. They're different telegrams. I hand you here a telegram dated June 17, 1917, and ask you if you received that?

A. Yes, sir.

Q. From where?

A. From Valdez; Valdez Packing Co.

Q. We offer that in evidence.

Judge WINN.—We object to this, your Honor, on the general grounds we have enumerated before. No issue raised in this case; remote and speculative.

Mr. FAULKNER.—Simply corroborates a portion of the testimony of Mr. McBride.

Judge WINN.—Not the best evidence and no foundation laid for it.

The COURT.—Objection overruled. It must be connected though.

Mr. FAULKNER.—Well, the testimony that has gone before shows that he had had this order. Simply corroborates it.

(Whereupon said telegram was received in evidence and marked Defendant's Exhibit "G," and afterward read by Mr. Faulkner, as follows:)

Defendant's Exhibit "G."

Valdez, Alaska, June 17, 1917.

Union Oil Co.,

Juneau, Alaska.

Our Seattle office advise us they placed order with you for thirty drums distillate. Please advise

(Testimony of J. C. McBride.)

us when you can ship as our supply is running very low and we need badly.

VALDEZ PACKING CO.

Q. I now hand you this telegram here, Mr. McBride. What is that? [131]

A. That is a telegram I sent to the Union Oil Company on June 23, 1917.

Q. The C. W. Young Company sent it?

A. Yes.

Judge WINN.—The same general objections and the same special objections that we made to these other letters and telegrams.

The COURT.—Objection overruled.

Mr. FAULKNER.—We offer it in evidence.

Judge WINN.—The same objection.

The COURT.—Objection overruled.

(Whereupon telegram mentioned was received in evidence and marked Defendant's Exhibit "H.")

Q. From where was this sent, Mr. McBride, this telegram, Defendant's Exhibit "H"?

Judge WINN.—The same objection.

A. From Juneau, Alaska.

The COURT.—Objection overruled.

Mr. FAULKNER.—I'll read it. (Reads:)

Defendant's Exhibit "H."

"June 23, 1917.

Union Oil Company,
Seattle, Washington.

Received order forty drums distillate day before yesterday from Valdez Packing Company and yes-

(Testimony of J. C. McBride.)

terday five drums gasoline. We expect to ship the distillate in a day or two unless you advise us to the contrary, but cannot ship the gasoline as we have but three drums on hand now. Steamer Portland was in day before yesterday and we expected the balance of our refined oil order on board, but none arrived. When can we expect it?

C. W. YOUNG COMPANY.”

Q. Now, Mr. McBride, I hand you a letter here and ask you from whom you received that?

A. I received that from the Union Oil Company at Seattle, signed by Mr. Clagett. [132]

Q. What date? A. May 22, 1915.

Q. I offer that—

Mr. KELLEY.—We make the same objections to this—same general objections and the same special objections.

Mr. FAULKNER.—This is regarding the shortages.

The COURT.—Objection overruled.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "I," and then read, as follows:

Defendant's Exhibit "I."

Seattle, Wash., May 22, 1915.

C. W. Young Company,
Juneau, Alaska.

Gentlemen:

We have your favor of the 12th, enclosing order for oils, which we are shipping you on the steamer Northnald leaving today.

(Testimony of J. C. McBride.)

We have been obliged to reduce your orders considerably, owing to the fact that we are very short of iron drums. We shipped out today all the drums we had on hand, and will make you another shipment at the earliest opportunity. In this connection we wish to request that you pay particular attention to the returning of empty drums. Send them to us at every opportunity, regardless of who is operating the boat, so long as we can get the \$2.00 rate. Do not hold them for the Borderline Transportation Co.

We have not been able to supply you with any of the small 55-gal. tanks, for the reason that we have none on hand.

The price of Oleum valve oil in fives, and in fact, all lubricating oils in fives, is 5¢ above the barrel price. We have not yet received the 15-gal. containers. We possibly will have some in the near future, and if you will send us your order, we will arrange to fill same.

Yours very truly,

UNION OIL COMPANY OF CALIFORNIA.

By C. M. COVIER(?) JCC.,
Special Agent. [133]

Q. I hand you another letter, Mr. McBride, dated June 15, 1915, and ask you from whom you received that?

A. Received that from the Union Oil Company; signed by Mr. Clagett.

The COURT.—What date was that?

The WITNESS.—June 15, 1915.

Mr. FAULKNER.—I offer that in evidence for the same purpose.

Judge WINN.—The same objection, if your Honor please. These letters don't connect up with anything that is in dispute, any issue under the pleadings in this case. These objections go to it and the other objections that we have urged heretofore. And not connected up with the bill of particulars sued on.

Mr. FAULKNER.—Simply for the purpose of showing that plaintiff had knowledge of the shortage.

Judge WINN.—You didn't sue for it. It's immaterial.

The COURT.—Objection overruled. It tends to support the defendant's allegations in his counterclaim.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "J," and then read by Mr. Faulkner, as follows:)

Defendant's Exhibit "J."

Seattle, Wash., June 15, 1915.

C. W. Young & Co.,
Juneau, Alaska.

Gentlemen:

We are in receipt of your favor of the 7th, to which you have attached an order for shipment to you on the S. S. Northland. We beg to advise that the steamer left last night with the majority of your order. We were obliged to cut out the order

for summer black, which we very much regret. We had an order in with the refinery for 175 bbls., of this commodity which we expected here last week, but for some reason or other it did not arrive. We are entirely out of this commodity. We will ship same, however, with next shipment, and do not anticipate any trouble in keeping you supplied with this or any other oil. [134]

We were obliged to cut your order for distillate to 70 drums and your order for gasoline to 30 drums, and eliminate entirely the distillate and gasoline orders in iron barrels. We were lucky to get this number back to you for the reason that the Northland did not discharge these drums at our dock until one o'clock on the day she departed. It was a question as to whether we could get drums filled in time to make the shipment. In addition to your order we had several orders for Alaska to go on the same boat, the drums for which arrived at the same time yours did. With regards to crude oil in barrels, we can supply you with this commodity which can be sold at 10¢ per gallon, Juneau.

We have not yet received a supply of 15-gallon containers. Just as soon as we do we will forward some to you. We have filled your order for lubricating oil and case oils complete, taking it for granted that you know the brand of these grades of oil and are not becoming overstocked on some oils that will not sell readily. Please send us your order

(Testimony of J. C. McBride.)

at the earliest opportunity covering next shipment on the next trip of the Northland.

Yours very truly,

UNION OIL COMPANY OF CALIFORNIA.

C. M. COVELL, JCC.,

Special Agent.

Q. Mr. McBride, I'll hand you a letter dated June 2, 1915, and ask you if that is a letter you wrote?

A. That's a letter I wrote to the Union Oil Company.

Q. On behalf of the C. W. Young Co.?

A. Yes, sir.

Mr. KELLEY.—We object, as incompetent, irrelevant and immaterial and no proper foundation laid—the same general objection and the same special objection.

The COURT.—Objection overruled. It may be received. I don't think the letter itself amounts to anything.

Mr. FAULKNER.—Simply notification or information as to the conditions.

Judge WINN.—We note an exception.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "K.") [135]

Q. From where was this letter written, Mr. McBride? A. Juneau, Alaska.

Mr. FAULKNER.—The letter is as follows:
(Reads:)

Defendant's Exhibit "K."

June 2, 1915.

Union Oil Company,
Seattle, Wash.

Gentlemen:

Yours of May 22d, 25th, 27th and 29th at hand and contents noted.

Since we have been emptying drums we haven't had any oil boats. When we first started we sold individuals a drum at a time which they drew from at their convenience, but since we have the tanks installed we have accumulated something like one hundred empty drums and these will be shipped on the Northland at the end of the week.

We hope that you will not make an allotment out of this shipment as we will be very short on refined oil before we can have these returned and we would like to have you save us as many more as you possibly can as we are going to use quite a few.

It certainly would be a great detriment to us to have a shortage of oil.

We secured the 1000 barrels of crude oil from the Taku Canning & Cold Storage Co. and notified the Borderline about the delivery; five hundred barrels about June 11th and the balance a little later.

Mr. Bradley, agent of the Standard Oil Co., notified me yesterday that there had been a reduction of $1/2\text{¢}$ on refined oil in bulk and 1¢ on case goods and we changed accordingly. This makes the price as they originally were.

(Testimony of J. C. McBride.)

We have been notified that distillate was selling at Sitka, Alaska, for 9¢. Have you any information on this?

Yours very truly,
C. W. YOUNG COMPANY,
Agents.

Q. Now, Mr. McBride, you state that most of your orders were sent by telegrams?

A. Yes, sir.

Q. And have you all those telegrams that were sent during all this period of three years now?

[136]

A. No; I haven't them all.

Q. Now, I'll hand you a telegram dated July sixth, 1915, and ask you if you sent that?

A. C. W. Young Company to the Union Oil Company; yes.

Mr. FAULKNER.—We'll offer that in evidence as preliminary to another question.

Judge WINN.—The same general objection and the same special objection; no proper foundation having been laid.

The COURT.—It may be received and filed and marked, subject to being connected up.

(Whereupon said telegram was received in evidence and marked Defendant's Exhibit "L.")

Q. From where was this telegram sent, Mr. McBride? A. From Juneau, Alaska.

Mr. FAULKNER.—The telegram is as follows:

(Testimony of J. C. McBride.)

Defendant's Exhibit "L."

July 6, 1915.

Union Oil Co.,
Seattle, Wash.

Ship Northland forty drums gasoline, hundred drums distillate, hundred cases gasoline.

C. W. YOUNG COMPANY.

Q. Now, did the Union Oil Company ship that order at that time?

Judge WINN.—The same objection, if your Honor please.

The COURT.—Objection overruled.

Q. Did you receive the oil? Was that order filled? A. No, sir.

Q. I hand you a letter dated August 11, 1915, and ask from whom you received that?

A. From the Union Oil Company at Seattle, Wash.

Q. Whose signature is that?

A. I can't make out that signature. [137]

Mr. FAULKNER.—We'll offer that in evidence.

Judge WINN.—The same general objection and the same special objection; especially also your Honor, that that isn't a matter that is sued upon in the case.

The COURT.—Objection overruled.

(Received in evidence and marked Defendant's Exhibit "M.")

(Letter read by Mr. Faulkner as follows:)

(Testimony of J. C. McBride.)

Defendant's Exhibit "M."

Seattle, Wash., August 11, 1915.

C. W. Young Company,
Juneau, Alaska.

Gentlemen:

We were obliged to reduce your last order on the s. s. Northland, account not having a sufficient number of drums.

It is only a question of a short time now until we have plenty of containers and will be able to ship your orders complete, as requested. We trust that you will continue to cooperate with us in the matter, and return the empty to us at the earliest opportunity.

Yours very truly,

UNION OIL COMPANY OF CALIFORNIA.

By C. M. COVELL, JCC.,

Special Agent.

Q. Now, I'll hand you a telegram dated Juneau, August 25, 1916, and ask you who sent that?

A. C. W. Young Company sent it to the Union Oil Company at Seattle.

Mr. FAULKNER.—We offer it in evidence.

Judge WINN.—The same general and the same special objection; no proper foundation having been laid.

The COURT.—Objection overruled.

(Whereupon said telegram was received in evidence and marked Defendant's Exhibit "N," and then read by Mr. Faulkner as follows:)

(Testimony of J. C. McBride.)

Defendant's Exhibit "N."

Juneau, Alaska, Aug. 25, 1916.

[138]

Union Oil Company of Calif.

Seattle, Washington.

Wire when we may expect shipment of oil.

C. W. YOUNG COMPANY.

Q. Here is another letter, Mr. McBride, and I'll ask you when you received that and from whom?

A. Received that from the Union Oil Company here.

Mr. FAULKNER.—We offer that in evidence.

Judge WINN.—The same general and special objections.

The COURT.—Objection overruled.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "O," and then read by Mr. Faulkner, as follows:)

Defendant's Exhibit "O."

"Seattle, Sept. 26, 1916.

C. W. Young & Co.,

Juneau, Alaska.

Answering letter, subject, Chichagoff Mining Co.,
Tacoma, Wash.

Dear Sir:

We are endeavoring to keep you permanently supplied with distillate at Juneau and do not anticipate your running short in the future. However, in case a shortage should occur through no fault of

(Testimony of J. C. McBride.)

ours, would like to have you give Chichagoff people preference on delivery, if you do not object. They have renewed contract with us and are dependent upon us for their supplies at that point.

Yours very truly,

V. H. KELLY, E. A.,

District Sales Manager.

Mr. FAULKNER.—I think that's all under that heading.

Adjournment taken until Monday, January 22, 1923, at 10 o'clock A. M.

Monday, January 22, A. D. 1923.

Court met pursuant to adjournment at 10 o'clock A. M.

J. C. McBRIDE, on witness-stand.

Direct Examination by Mr. FAULKNER (Resumed). [139]

Q. I think I asked you the other day, Saturday, but I want to make sure, did you notify the Union Oil Company about these orders which you had and couldn't fill? A. Yes, sir.

Q. Now, did you go to Seattle to see them about it? A. Yes, sir.

Q. When was the first time you went—

Judge WINN.—What was that question?

Q. When did you go to Seattle to see the Union Oil Company about these shortages?

A. It was in October, 1915.

Q. Did you, at that time, take the matter up with the company? A. Yes, sir.

(Testimony of J. C. McBride.)

Q. With whom? A. Mr. Clagett.

Q. Now, during the years 1915, 1916 and 1917, you have given a list of orders that you received for oil which you couldn't fill. Now, were those orders from the ordinary trade, or was there anything extraordinary about them?

Judge WINN.—I object, if your Honor please, on the ground that it calls for a conclusion and an interpretation of the contract itself. Now, the written contract and the oral contract, as they contend it, is before the Court. Now, then, what orders were taken under it are absolutely matters for interpretation of the contract; and we further object to it as irrelevant and immaterial and speculative, uncertain, and because it comes within the statute of frauds.

Mr. FAULKNER.—I simply want to show that these orders were not extraordinary.

The COURT.—I think the question is objectionable. [140]

Mr. FAULKNER.—I might ask it in another way; I might ask about the conditions at the time. I will withdraw that question.

Q. Mr. McBride, you have given us a list of certain canneries and consumers of gasoline that would give orders to you during the years 1915, 1916 and 1917. Were those canneries operating during all those years? A. Yes, sir.

Q. Were they operating in 1914? A. Yes, sir.

Q. Were these gas boat owners and other con-

(Testimony of J. C. McBride.)

sumers of gasoline whose names you have given, operating here during that time? A. Yes, sir.

Judge WINN.—Object to 1914—irrelevant and immaterial under the issues in this case.

The COURT.—Objection overruled.

Q. And in 1915, 1916 and 1917? A. Yes, sir.

Q. Now, you say here, Mr. McBride, that you had a good deal of correspondence with the Union Oil Company regarding these matters?

A. Yes, sir.

Q. Have you all that correspondence now?

A. No; I haven't.

Q. Have you all the files that were made during all those years? A. No, sir.

Q. I think you stated Saturday that you had a memorandum from which you could check up some of these items on the bill of particulars. I will ask you if, since you were on the [141] stand Saturday, you found any particular written order for gasoline, refined oil?

A. Yes, sir.

Q. In your files. A. Yes.

Q. I'll hand you that and ask you where you got that?

A. In some of the papers that I have.

Mr. FAULKNER.—We'll offer that in evidence.

Judge WINN.—The same objection, if your Honor please, to this that we have urged to the other exhibits offered in this case; and because the contract of 1915–1916, if such a contract existed,

(Testimony of J. C. McBride.)

would be governed by the contents and not any oral testimony.

The COURT.—Objection overruled.

(Whereupon a form of memorandum of agreement, consisting of one sheet, ordering and agreeing to take certain quantities of oil and grease from the Union Oil Company, dated at Juneau, Alaska, Jan. 14, 1916, and signed by the Scandinavian Grocery, was received in evidence and marked Defendant's Exhibit "P.")

Mr. FAULKNER.—I'll hand it to the jury.

Q. Now, you mentioned in your testimony Saturday orders from the Pillar Bay Packing Company, Tenakee Fisheries Company and the Northwestern Fisheries Company. Did you notify the Union Oil Company specifically of those orders that could not be filled? A. Yes, sir.

Q. I'll hand you that letter and ask you if you wrote that.

The COURT.—Is that the original letter?

Mr. FAULKNER.—No, sir.

The COURT.—You better show it to counsel.
[142]

Mr. FAULKNER.—They have the original of that. Of course, that was written to the Union Oil Company and this is simply a copy of it.

Judge WINN.—We make the same objection, if your Honor please, to this; and that it doesn't come within the issues under the pleadings. Your Honor will observe that under the pleadings in this case, there is nothing that would justify the evi-

(Testimony of J. C. McBride.)

dence and testimony that they are now trying to introduce.

The COURT.—Objection overruled. You may read it.

Mr. KELLEY.—We save an exception.

The COURT.—Yes.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "Q.")

Judge WINN.—The same objection that I made to the other papers; no proper foundation having been laid.

Q. Where was this written from?

A. Written from Juneau in 1916.

(Letter read to the jury by Mr. Faulkner as follows:)

Defendant's Exhibit "Q."

July 25, 1916.

The Union Oil Company of California,
Seattle, Wash.

Gentlemen:

In the past week we have had the following orders:

Pillar Bay Canning Co., 15 drums of distillate.

Tenakee Fisheries, 30 drums of distillate.

Northwestern Fisheries Co. of Dundas Bay, 30 drums of distillate, which we could not fill.

We, of course, have some few drums of distillate on hand, but we could not let these go as it would run the Chichagoff Mining Co. short and also our local trade.

Yours very truly,

C. W. YOUNG CO. [143]

(Testimony of J. C. McBride.)

Q. Now, you mentioned another one, George Naud. I will ask you if you had any correspondence with the Union Oil Company regarding that particular order? A. Yes, sir.

Q. Did you write them a letter? A. Yes, sir.

Q. Did you receive an answer to your letter?

A. Yes, sir.

Q. I will ask you if that is the letter and the reply (handing letters to witness)? A. Yes, sir.

Mr. FAULKNER.—We'll offer those as an exhibit.

Judge WINN.—The same objection, if your Honor please, that we made to those other exhibits and letters that were offered in evidence, of like kind; and further, there is nothing in the pleadings that would justify this class of testimony; nothing to show that any demand was ever made on the company and nothing in the pleadings to indicate that.

The COURT.—Objection overruled.

Mr. KELLEY.—We save an exception.

(Whereupon said two letters were received as one exhibit and marked Defendant's Exhibit "R.")

The COURT.—That was included in the bill of particulars?

Mr. FAULKNER.—Yes. These two can go together. The letters are as follows:

Defendant's Exhibit "R."

June 13, 1917.

Union Oil Co. of California,
Seattle, Washington.

Gentlemen:

George Naud is a fish buyer from Taku River, [144] south of here, about twenty-five miles, and does more or less selling to the fishermen. He informed us today that in buying distillate and naphtha through the Taku cannery who make their purchases from the Standard Oil Co., he could get $\frac{1}{2}\text{¢}$ off. Mr. Naud is willing to give us the business if we can meet this $\frac{1}{2}\text{¢}$ rebate. He will use approximately 3,000 gallons of distillate and and 5,000 gallons of naphtha.

Hoping you will give us authority to make this price, we remain,

Yours very truly,

C. W. YOUNG COMPANY.

Seattle, Wash., June 20, 1917.

C. W. Young Company,
Juneau, Alaska.

Gentlemen:

It will be satisfactory for you to extend Mr. Naud $\frac{1}{2}\text{¢}$ gallon off the market price on daily delivery on distillate and naphtha, at least for the present.

We do not wish to take on business of this kind and are inclined to confine our sales of distillate,

(Testimony of J. C. McBride.)

naphtha and gasoline to such customers as purchase their lubricating oils from us also.

Yours very truly,

V. H. KELLY,

EA.,

District Sales Manager.

Q. You mentioned another one from the Icy Straits Packing Company, Mr. McBride. Did you write the Union Oil Company about that?

A. Yes, sir.

Q. I hand you a letter dated April 7, 1917, and ask you if that is the letter you wrote?

A. Yes, sir.

Q. We'll offer that in evidence.

Judge WINN.—We make the same objection to this, if your Honor please, as not the best evidence; no foundation laid for the introduction of it. [145]

The COURT.—Well, I don't know that it is the best evidence. You may make a demand for the original. Do you object to it for that reason?

Judge WINN.—Yes, sir; and then the objections that I have been, of course, urging to all these letters and orders, without repeating them and encumbering the record. They don't come within the issues of the case, prospective and speculative, and barred by the statute of frauds.

Mr. FAULKNER.—Of course, I could make a demand upon him. I presume that the demand would have to be in writing.

The COURT.—No.

Mr. FAULKNER.—Well, now, we'll demand the original of the plaintiff. The letter is dated April 7, 1917, and is from the C. W. Young Company to the Union Oil Company; also letters of July 22, 1916, from the C. W. Young Company to the Union Oil Company.

Judge WINN.—Well, the situation is this, if your Honor please. The Union Oil Company and its records of that transaction, as shown by the correspondence, is in Seattle, Washington. There is nothing within the pleadings or the issues raised under the pleadings to indicate that the Union Oil Company deemed any such correspondence was necessary at all; nothing in the pleadings at all to show that they ever made any demand or requests for additional oil to fulfill certain contracts that they had here, and now they demand that we produce the original of two letters. Seattle is distant from here, which the Court will take judicial notice of, and we have no such correspondence here and didn't bring it for the reason that I have just stated. If there is going to be any demand made under [146] the issues of the case, the demand should have been made in time to allow us to produce the originals here for the purpose of whatever counsel may have intended to use them for.

Mr. FAULKNER.—There is an allegation of violation of the contract; that they didn't keep the defendant supplied with sufficient oil for the trade.

The COURT.—Not being able to furnish the original, you are allowed to introduce the copy.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "S.")

Judge WINN.—Well, if it is necessary to prove all the facts that I stated as true, I'll have Mr. Trew here file an affidavit that the assertions that I am making to the Court are absolutely the facts.

The COURT.—The Court has its idea of trying this case. You may be trying it with a different view of the law from what the Court is. The Court takes a different view of the pleadings from what you have stated here, and the Court is not in agreement with you. If the Court is in error, the Court has been in error all through this case. When you state such things as this are not within the pleadings, the Court has already decided that they are within the pleadings and it is your duty to be prepared to meet any possible theory of the case that might come up under the pleadings.

Judge WINN.—Well, have you ruled on the pleadings?

The COURT.—Yes.

Judge WINN.—If there is any doubt about my word that we didn't have them— [147]

The COURT.—Oh, no. Simply a difference between the plaintiff's view of the pleadings and my view of the pleadings.

Judge WINN.—Well, if it is based on that—

The COURT.—Yes.

Judge WINN.—We take an exception to the ruling of the Court.

(Defendant's Exhibit "S" read by Mr. Faulkner, as follows:)

(Testimony of J. C. McBride.)

Defendant's Exhibit "S."

April 7, 1917.

Union Oil Company of California,
Seattle, Washington.

Gentlemen:

The Icy Straits Packing Co., practically a local concern, are driving six fishtraps or better, in in preparatory to the coming fishing season. They will have in operation two gasoline launches for the delivery of their fish and will be in the market probably for 20,000 to 30,000 gallons of refined oil, and no doubt will shortly ask us to give them a price on same. Therefore, will you kindly let us know as soon as possible what we can quote them from the market price.

If their expectations to not fail they will be a very large fishing concern in southeastern Alaska as they are contemplating for 1918 the construction of a cannery and cold-storage plant in Icy Straits, which is between here and Sitka. This year they are merely prospecting with their traps to ascertain the size cannery they should build.

Yours very truly,

C. W. YOUNG COMPANY.

Q. Now, we make the same demand on the plaintiff for the original letter of June 7, 1916, from the C. W. Young Company to the Union Oil Company.

Judge WINN.—We make the same answer to this demand that we made to the other, without

(Testimony of J. C. McBride.)

repeating it and encumbering the record in the case.

The COURT.—The same objection?

Judge WINN.—The same objection; yes, sir.
[148]

The COURT.—The same answer to the demand?

Mr. KELLEY.—Yes.

The COURT.—Objection overruled.

Judge WINN.—Allow us an exception to the ruling.

Mr. FAULKNER.—That is not any specific order, but the letter is about the shortage. One paragraph of it, I don't think is material.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "T.")

Q. That letter was sent by you, Mr. McBride?

A. Yes, sir.

Q. To the Union Oil Company.

(Letter read by Mr. Faulkner, as follows:)

Defendant's Exhibit "T."

June 7, 1915.

Union Oil Company,
Seattle, Wash.

Gentlemen:

On S. S. Northland, sailing from here yesterday morning we shipped you 107 empty drums, nine of which, as per list enclosed, are from the Alaska Gastineau Mining Company and the balance, 98, list of which is herewith, are from us.

The three drums of Water White oil which we received on this Northland, their number and gallons are as follows:

No. 16304, gallons, 109
No. 0776 gallons, 103.
No. 1435 gallons, 104.

Enclosed herewith you will find our order which kindly return on this trip of the Northland.

No doubt you will have ample drums for this order as we understand that there is quite a few to be shipped you from Ketchikan.

It is very necessary that the distillate and gasoline order is filled for this trip of the Northland, as we will be short both products if we do not receive them. [149]

The cannery season is just opening up and we are soliciting their business and have some very encouraging promises and from the way the refined and lubricating business has opened up for us we feel that we are positive of our share, and a shortage would spell disaster just at the present time since we have begged their business and we have made a thorough campaign of advertising.

We had an order last week for six barrels of summer black and we could only give them one barrel and in today's order we have included 10 barrels of summer black with the hopes of catching another shortage. The writer believes there are two or three barrels used per day of this grade of oil here on the channel and we feel that if we could get a better price on this oil that we could sell quite a few barrels of it which would mean a

(Testimony of J. C. McBride.)

wedge for more business. Kindly see if you cannot figure out a better price.

We have had two or three inquiries for crude oil in barrels, will you kindly give us price on same delivered here.

We have again ordered galvanized tanks and hope this time you will be able to send us same as they are the proper containers for outside business, and if you have any fifteen gallon containers, send us some of these. We have noticed that all our orders have been cut down and we hope you will not do this with the one enclosed, as we feel that our judgment must be relied upon at this station.

Yours very truly,

C. W. YOUNG COMPANY.

Mr. FAULKNER.—Now, I will demand from the plaintiff the original letter of July 22, 1916, from the C. W. Young Company to the Union Oil Company.

Mr. KELLEY.—The same answer as heretofore stated.

Judge WINN.—The same answer so far as the production of the paper is concerned.

The COURT.—The plaintiff says he cannot produce the original of which this is a copy?

Judge WINN.—Yes; for the same reasons I stated before.

Mr. FAULKNER.—We now offer it. First, I want to identify it.

Q. I will ask you if you can identify it.

(Testimony of J. C. McBride.)

The COURT.—Ask him if he mailed it. [150]

Q. Did you mail the original of that to the address of the Union Oil Company? A. Yes.

Q. When? A. July 22, 1916.

Q. From where? A. Juneau, Alaska.

Mr. FAULKNER.—We now offer it in evidence.

Judge WINN.—The same objection that we have made, if your Honor please; to all these letters and correspondence that has been offered in evidence, without repeating it and encumbering the record with our objections.

The COURT.—Objection overruled.

(Whereupon said copy of letter was received in evidence and marked Defendant's Exhibit "U.")

Mr. FAULKNER.—The letter is as follows:

Defendant's Exhibit "U."

“July 22, 1916.

The Union Oil Company of California,
Seattle, Wash.

Gentlemen:

We returned to you last week on steamer Curacao 144 empty drums, and to-day on S. S. Revilla we are forwarding you 20 drums.

We had a letter from Mr. Hanlon saying that the Wakena would not leave until probably August fifth, and we hope that by this time that we may be able to get a substantial shipment from you, both in refined and lubricating oils.

We wired you a few days ago that we would stand the difference between the old and present freight rate on a few drums of the oil. It would

(Testimony of J. C. McBride.)

not be policy to run out of refined oil and lose all of our trade, and for this reason we are willing to make a sacrifice on a small shipment until we can have a substantial shipment on the Wakena. However, we do not feel that it is up to us to even do this, because, as the writer has already said, if we have [151] not refined oil and our customers go to our competitors, it is a hard proposition to gain these customers back.

Yours very truly,

C. W. YOUNG COMPANY,

By _____.

Q. Now, I hand you a letter dated November 20th, and ask you if you have seen that?

A. Yes, sir.

Q. Where did you get that?

A. Received it here.

Q. From whom? A. Union Oil Company.

Q. Signed by whom?

A. Mr. V. H. Kelly, district sales manager.

Mr. FAULKNER.—We now offer that in evidence.

Q. Is that letter just exactly as you received it?

A. Yes, sir.

Q. And the writing on the bottom was on there when you received it? A. Yes, sir.

Judge WINN.—The same objection we made to the other letters without a repetition of the objection.

The COURT.—Objection overruled.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "V," and then read by Mr. Faulkner, as follows:)

Defendant's Exhibit "V."

Union Oil Company of California,
November 20, 1916.

Chichagoff Mining Company,
Tacoma, Wash.

Attention: G. W. Duncan, Purchasing Agent.

Dear Sir: [152]

We are in receipt of your favor of November 18, which is notice of cancellation of our contract with you, and trust that you will find our Juneau deliveries more dependable and that we may have the pleasure of serving you in the future. We make full acknowledgment of the fact that our stock and service at Juneau has not been satisfactory during the past months, but ample supplies are now available and care is given to affording customers satisfactory service and products.

Yours very truly,

UNION OIL COMPANY OF CALIFORNIA.

V. H. KELLY,

District Sales Manager.

And on the bottom of the letter:

C. W. Young & Co.,
Juneau, Alaska,

The mine office at Chichagoff have complained to their Tacoma office and while Mr. Duncan wishes to favor us with the distillate business at Juneau,

(Testimony of J. C. McBride.)

he does not feel inclined to do so, unless his mine office writes him that services is improved.

Q. Now, I hand you another letter, Mr. McBride, and ask you from whom you received that?

A. I received this from the Union Oil Company; signed by V. H. Kelly, District Sales Manager.

Q. From where? From Seattle?

A. From Seattle.

Q. I now offer that in evidence.

Judge WINN.—The same objection, if your Honor please, and particularly that it does not come within the issues of the pleadings, and I wish to call your Honor's attention to the date of that letter in 1917. The others have all been prior to 1917.

The COURT—Yes; I understand that.

Judge WINN.—And there is no foundation laid for it.

Mr. FAULKNER.—There is one line in that letter that is important that I want in. [153]

The COURT.—Certainly. The date is prior to the signing of the written contract; you'll notice that. The written contract was signed February 14, 1917, and this letter was dated February 2, 1917.

Mr. FAULKNER.—But this is while the oral contract was in performance.

The COURT.—While the oral contract was in performance?

Mr. FAULKNER.—Yes.

The COURT.—Objection overruled.

(Whereupon letter was received in evidence and marked Defendant's Exhibit "W," and then read to the jury, as follows:)

Defendant's Exhibit "W."

Seattle, Wash., Feb. 21, 1917.

C. W. Young & Co.,
Juneau, Alaska.

Answering letter 2/9/17.

Subject: Washington Bay Packing Co.

Dear sir:

Replying to your favor of the ninth instant, regret to advise that we will not be able to consider establishing an agency at Washington Bay this year, as the equipment available makes it impossible. Whatever of this business you are able to take care of at the regular prices, you should look after, providing the drums can be returned promptly. It is our desire to keep you well supplied this year and not have any of the shortages that handicapped us last year. We could not enter into any plan to put in a stock at any additional point in southeastern Alaska.

Yours very truly,

V. H. KELLY,

District Sales Manager.

Mr. FAULKNER.—I will now ask the plaintiff for the original telegram, dated August 10, 1916, from the C. W. Young Company.

Mr. KELLEY.—We make the same reply that we have heretofore made. [154]

(Testimony of J. C. McBride.)

Judge WINN.—I don't know whether any such telegram was ever received by us or not.

Q. Mr. McBride, I hand you a telegram dated August 10, 1916, and ask you if you sent that?

A. Yes, sir.

Q. From the C. W. Young Co.?

A. The C. W. Young Company sent it to the Union Oil Company at Seattle.

Q. On the date that is given on there?

A. Yes, sir.

Q. I now offer that telegram.

Mr. KELLEY.—We make the same objection.

The COURT.—Objection overruled.

(Whereupon said telegram was received in evidence and marked Defendant's Exhibit "X.")

(Telegram read by Mr. Faulkner, as follows:)

Defendant's Exhibit "X."

Juneau, Alaska, Aug. 10, 1916.

Union Oil Co. of California,

Seattle, Wash.

Must have oil immediately shipment just received will last until Sunday. Wire when we can expect shipment as we are turning down business every day.

C. W. YOUNG CO.

Q. I'll hand you another telegram, dated July 2, 1917, and ask you from whom you received that?

A. Received that from D. H. Kelley of the Union Oil Company at Seattle.

(Testimony of J. C. McBride.)

Q. (Mr. FAULKNER.) We'll offer that in evidence.

Judge WINN.—The same objection, if your Honor please. That is dated February 7, 1917.
[155]

Mr. FAULKNER.—July 2.

Judge WINN.—July 2, the written contract was not in existence or in force and effect. No fault of ours that it wasn't signed sooner.

Mr. FAULKNER.—If the Court please, there is another notation on the back of it, and for that reason I would like permission to read the telegram, or else erase that. That is, I don't object to its going in if the other side doesn't.

Judge WINN.—I didn't notice that. It relates to no part of the telegram.

The COURT.—It better be eliminated.

Mr. FAULKNER.—Yes. Does the Court overrule the objection?

The COURT.—Yes; I overrule the objection.

(Whereupon said telegram was received and marked Defendant's Exhibit "Y," and then read as follows:)

Defendant's Exhibit "Y."

Seattle, Jul. 2, 1917.

C. W. Young Co.,

Juneau,

No immediate shipment available. Better conserve for local business.

V. H. KELLY.

Q. Now, Mr. McBride—don't answer this ques-

(Testimony of J. C. McBride.)

tion if it is objected to until the Court rules on it—at the time you received this telegram, did you have any other order for oil that is not mentioned in the bill of particulars, which you could not fill?

Judge WINN.—Hold on; that is too indefinite and uncertain.

Mr. FAULKNER.—No—

Judge WINN.—And it is not shown whether it is in the bill of particulars. Then he hands him this telegram. Now, if Mr. McBride remembers anything about it, if it is material [156] or relevant or competent under the pleadings and the objections that I have made, why his memory is better than his memorandum, which may be for some self-serving purpose. We don't know anything about the memorandum.

Mr. FAULKNER.—He can't keep all these various matters in his head.

The COURT.—First ask him if he remembers.

Mr. FAULKNER.—I did.

The COURT.—If he does not remember.

Q. Do you remember, Mr. McBride, if you had any order at that time for oil which is not set forth in the bill of particulars? A. Yes, sir.

Q. Now, I will ask you from whom was that order.

Judge WINN.—We urge the same objection; particularly the objection heretofore made that no evidence can be produced in this case except on the items set forth in the bill of particulars. He is

(Testimony of J. C. McBride.)

bound by the bill of particulars under the record and evidence and under the law.

Mr. FAULKNER.—The offer is made for the purpose of showing the general conditions stated; that there was—

The COURT.—(Interrupting.) Objection overruled.

Q. From whom was that?

A. The Deep Sea Salmon Canning Company; Mr. August Buschmann, manager.

Q. Where?

A. At their cannery in Icy Straits.

Q. And at that time could you fill that order?

A. No, sir.

Judge WINN.—The same objection. [157]

The COURT.—Objection overruled.

Q. Why didn't you fill it?

Judge WINN.—The same objection.

A. I was short of oil.

Q. Now, perhaps this question will be objected to. I don't know that it is very material. Don't answer it until the Court rules on it. Did you notify Mr. Buschmann to that effect?

Judge WINN.—What is that question?

Q. Did you notify Mr. Buschmann to that effect that you had no oil?

Judge WINN.—That is immaterial.

The COURT.—I think so.

Q. Now, I hand you a letter dated July 27, 1917, and ask you from whom you received that?

Judge WINN.—What date?

(Testimony of J. C. McBride.)

A. July 27, 1917. Received it from the Union Oil Company, Mr. Clagett, as district sales manager.

Mr. FAULKNER.—I offer that in evidence.

Judge WINN.—There are certain numbers and figures or memoranda on this that we would urge a special objection to.

Mr. FAULKNER.—We will take it off.

Judge WINN.—We make the same objection to the introduction of this letter.

The COURT.—Objection overruled.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "Z," and then read as follows:)

Defendant's Exhibit "Z."

Seattle, Wash., July 27, 1917.

C. W. Young & Co.,
Juneau, Alaska,
Gentlemen: [158]

We were anticipating sending you a shipment of various oils on this trip of the S. S. Portland, but on account of the condition of our stocks at Seattle, we are unable to make shipment at the present time.

We note that your supply of gasoline is quite low, and we trust that on the next trip of the Portland, we will be able to ship you what oils you may need. Would suggest that in the meantime you let us have an order of what you want.

Yours truly,

GEO. D. CLAGETT,
District Manager.

(Testimony of J. C. McBride.)

Judge WINN.—We urge the same objection, if your Honor please, to this letter, along the same line, the same as to the rest of them.

Q. Mr. McBride, I will ask you where did you receive that letter?

A. I received it here at Juneau.

Q. From whom?

A. Union Oil Company, Mr. Clagett.

Q. Through the mails? A. Through the mails.

Q. We now offer it in evidence.

Judge WINN.—The same objection unless there is some explanation made. There is a memorandum there in pencil that is not a portion of the letter evidently.

Mr. FAULKNER.—Well, I'm offering to put the letter in evidence, read the letter, then have it—if the Court thinks we can't put this pencil memorandum in, it could be erased by the Clerk very easily.

The COURT.—You can read the letter without the pencil memorandum. [159]

(Letter thereupon read to the jury by Mr. Faulkner as follows:)

Defendant's Exhibit "A-1."

Seattle, Wash., March 24, 1915.

C. W. Young Company,
Juneau, Alaska.

Gentlemen:

We have your favor of the 18th instant, attaching order for oils to be shipped you on the Northland.

We are informed that the Northland will leave Seattle Thursday, March 25.

We have checked up your order carefully and have made a few changes, as follows:

We have decreased your order for case gasoline to 200 cases; also changed your order for 50 cases 70 to 86 to 5 cases; the gasoline which we are supplying on this order is 80 gravity.

We have reduced your order for Union kerosene to 100 cases.

We have reduced your order for Motoreze light in 1 gallon cans to 1 case.

We have changed your order for Motoreze medium in 1 gallon cans to 2 cases.

We have increased your order to 5 barrels of Ideal gas engine.

We have changed your order for two barrels floor oil to 5 cases. We are under the impression that two barrels of this commodity would greatly overstock you. However, if you have business in mind that we do not know of, please advise, and we will send what you wish with your next order.

We have included in your order 1 case of 6-10# pails of Green transmission grease and 1 case of 12-5# cans of Green transmission.

2 barrels of Champion engine.

5 cases of 2/5 Champion engine.

2 barrels Champion Engine heavy.

2 barrels Union light castor.

2 cases 2/5s Union light castor.

2 barrels Pacific Steam cylinder.

5 cases 2/5s Pacific Steam Cylinder.

(Testimony of J. C. McBride.)

1 barrel summer black oil.

3 barrels Perfecto gas engine oil.

10 cases 2/5s Perfecto gas engine oil. [160]

We are also including in this shipment 3 Universal floor oilers. Your price on these is \$1.25 each.

Relative to that paragraph of your letter in regard to the prices to stores, mines and canneries, prices to these people are net, and they are not to be allowed any reduced prices, excepting such canneries that we may have contract with, in which case the price is $\frac{1}{2}c$ off.

Yours very truly,

UNION OIL COMPANY OF CALIFORNIA.

By C. M. COVELL,

JCC.

Special Agent.

Whereupon letter was received in evidence and marked Defendant's Exhibit "A-1."

Mr. FAULKNER.—I don't think those pencil marks make any difference. We'll ask the clerk to erase them, unless counsel wants to cross-examine the witness on them.

Q. Now, Mr. McBride, I'll hand you a telegram marked April 5, 1916, and ask from whom you received that.

A. From the Union Oil Company of Seattle.

Mr. FAULKNER.—We'll offer that in evidence.

Judge WINN.—The same objection, if your Honor please.

The COURT.—Objection overruled.

(Testimony of J. C. McBride.)

(Whereupon said telegram was received in evidence and marked Defendant's Exhibit "B-1," and then read, as follows:)

Defendant's Exhibit "B-1."

Seattle, April 5, 1916.

C. W. Young Co.,
Juneau.

Please do not solicit any further business for us owing to unreasonable advance in freight rates we will be unable to make you any further shipments.

UNION OIL CO. OF CALIFORNIA.

Q. Now, after you received that telegram, Mr. McBride, did you take up with them the matter of further shipments? A. Yes, sir.

Q. Did you receive some further shipments after that? A. Yes, sir. [161]

Judge WINN.—Object to it as incompetent, irrelevant and immaterial, and the same objection that we made to the other questions.

The COURT.—Objection overruled.

Q. Did they, or did they not cancel their contract from then on? A. No, sir.

Judge WINN.—Object to it as calling for a conclusion of the witness.

The COURT.—Objection overruled.

Judge WINN.—As to what was done.

Q. Now, Mr. McBride, when this agency was at an end, did you have some discussions with the officers of the Union Oil Company regarding an adjustment of these differences? A. Yes, sir.

Judge WINN.—We object to that.

The COURT.—Which agency.

Mr. FAULKNER.—There was— The agency at Juneau for the sale of oils at Juneau.

A. I—

Judge WINN.—(Interrupting.) Wait; wait—

The COURT.—Wait a moment. There are two separate contracts.

Mr. FAULKNER.—Well, I mean at the end of the whole transaction.

The COURT.—In 1918?

Mr. FAULKNER.—In 1918 and 1919.

Mr. KELLEY.—Well, fix the time.

Mr. FAULKNER.—I'm going to introduce letters to show.

Judge WINN.—Well, then, the letters will be the best evidence. [162]

Mr. FAULKNER.—I have to lay a foundation for the introduction of the letters.

The COURT.—It is simply preliminary.

Judge WINN.—I want to object to it as being irrelevant and immaterial under the issues in this case and under the answer and the counterclaim or cross-complaint would not permit anything of this kind to be introduced in evidence.

Mr. FAULKNER.—Here is an allegation that there was some specific payments on those differences.

Judge WINN.—That is evidence of a settlement that you are trying to introduce?

(Testimony of J. C. McBride.)

Mr. FAULKNER.—No; evidence of the acknowledgment of the balance due; balance due the C. W. Young Company.

Judge WINN.—I don't think that it is competent, your Honor, and I object. You might introduce negotiations for a settlement.

The COURT.—I think I will allow it because of Mr. Trew's testimony that there was an adjustment, a personal adjustment had and a balancing, and I think his testimony also was that there was no question of any differences between them. The objection will be overruled.

Mr. KELLEY.—Exception.

Q. Now, Mr. McBride, who succeeded Mr. Clagett, as district manager at Seattle, do you remember?

A. I can't recall his name just this minute.

Q. Well, I'll hand you a letter marked April 25, 1919, and ask you from whom you received that?

A. This is from the Union Oil Company at Seattle.

Q. Who signed it? [163]

A. That doesn't—I can't—

Q. Condlon? A. Condlon; yes.

Q. Who is Mr. Condlon?

A. He followed Mr. Clagett as district manager.

Q. Succeeded Mr. Clagett. We now offer that letter in evidence.

Judge WINN.—We object to that letter; the same objections that we have made to the others. In ad-

(Testimony of J. C. McBride.)

dition to the other objections, I think it is absolutely immaterial.

Mr. FAULKNER.—That is simply preliminary.

Mr. KELLEY.—I would like to have counsel introduce all the letters at once so that we may make our objection to all of them at the same time if they pertain to the same transaction.

Mr. FAULKNER.—I just wanted to introduce those letters in their order—there are four of them—in their order as to date. That letter wouldn't be very material, but it's the other ones that follow.

The COURT.—I don't see the materiality of this one.

Mr. FAULKNER.—I'll state that this is simply preliminary to the others. It would be immaterial standing alone.

The COURT.—You might offer it and have it identified and then connect it up with the others and then offer the others in evidence.

Q. I'll hand you another letter, Mr. McBride, and ask you from whom you received that.

A. From the Union Oil Company; Mr. Condlon.

Q. To the C. W. Young Company.

A. Yes. [164]

Mr. FAULKNER.—We'll offer that in evidence.

Judge WINN.—The same objection.

Mr. FAULKNER.—I might state that the whole purpose of these letters and that telegram—

The COURT.—(Interrupting.) Which telegram is it?

Mr. FAULKNER.—The telegram asking the C. W. Young Company not to solicit any further business.

The COURT.—What is the date of that?

Mr. FAULKNER.—April 5, 1916. The purpose of introducing this evidence is to show the acknowledgment by the Union Oil Company of a violation of their contract.

Judge WINN.—The letter doesn't show it.

The COURT.—It doesn't show anything to that effect in that letter that you are offering in evidence; it doesn't show anything to connect it up with your purpose.

Mr. FAULKNER.—They deny sending it, for one thing. The settlement depended on the production of that telegram.

Judge WINN.—It is not admissible under the pleadings, if your Honor please. There is nothing in the pleadings to justify the introduction of the letter.

The COURT.—Objection overruled. The letters, all taken together, show that there was a controversy and adjustment after the discontinuance of the agency in 1916, and it is material on the question of the settlement between the parties as testified to by Mr. Trew, in 1918.

Mr. KELLEY.—I want to call your Honor's attention to what the witness has testified, to the effect that when he received that telegram that the contract was not canceled.

Mr. FAULKNER.—We don't contend that. [165]

Judge WINN.—That contract went on just as though the telegram had never been sent.

The COURT.—Your declaration is not warranted from his testimony. He testified afterwards he received shipments of oil.

Judge WINN.—It is admitted that they agreed to pay these respective amounts that were due and there is no dispute—

The COURT.—That is true, but the testimony of Mr. Trew was to the effect that there had been a final settlement at the time and all matters between the parties were adjusted at the time.

Judge WINN.—The pleadings admit it.

The COURT.—No; they don't. Your reply sets that up, but that is supposed to be denied.

Mr. FAULKNER.—And the telegram was introduced for the purpose of showing that there was a shortage at that time.

The COURT.—The pleadings are rather peculiar and, of course, I feel that all this testimony should go in, subject to the limitations and restrictions made by the Court afterward.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "C-1," and then read, as follows:)

(Testimony of J. C. McBride.)

Defendant's Exhibit "C-1."

Seattle, Wash. Sept. 17, 1919.

C. W. Young Company,
Juneau, Alaska.

Attention Mr. J. C. McBride.

Gentlemen:

We wrote you last on August 19th regarding the telegram in question and to date have had no reply from you. We would appreciate hearing from you by return mail, advising if you have been able to locate the telegram.

Yours very truly,

UNION OIL COMPANY OF CALIFORNIA.

W. J. CONDLON,

District Sales Manager. [166]

Q. Now, I hand you a letter dated August 19, 1919, and ask you from whom you received that.

A. From the Union Oil Company; Mr. Condlon, district manager.

Mr. FAULKNER.—We offer that in evidence.

Judge WINN.—The same objection, if your Honor please, and it is not admissible under any issues raised on the pleadings.

The COURT.—Objection overruled.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "D-1.")

Defendant's Exhibit "D-1."

Seattle, Wash., Aug. 19, 1919.

C. W. Young Co.,
Juneau, Alaska.

Attention Mr. J. C. McBride.

Gentlemen:

The writer has been talking to Mr. Earl Naud regarding the telegram which was sent you from the Seattle office early in the summer of 1916. Mr. Naud advises that he was not in your employ at that time and Mr. McKenzie, who is now working for us as salesman, states that was the time the telegram was received.

We have called at both the cable and wireless offices in this city, trying to obtain the original copy, but they advise that the government instructed them to destroy all telegrams over two years old and they are therefore, unable to comply with our request.

We suggest that you get in touch with the local office of both the wireless and the cable and they may be able to produce this telegram for you. We trust you will give this matter your attention, as we are very anxious to forward this telegram to Mr. Ralph, so that adjustment can be made of your account.

Yours very truly,

UNION OIL COMPANY OF CALIFORNIA,
W. J. CONDLON,
District Sales Manager.

(Testimony of J. C. McBride.)

Q. I hand you another letter, dated Seattle, December 30, 1919, and ask you from whom you received that? [167]

A. From the Union Oil Company.

Q. From Seattle? A. From Seattle.

Mr. FAULKNER.—We offer that in evidence.

Judge WINN.—The same objection.

The COURT.—The same ruling.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "E-1.")

Mr. FAULKNER.—The letter is as follows:

Defendant's Exhibit "E-1."

Seattle, Wash., Dec. 30, 1919.

C. W. Young Co.,

Juneau, Alaska.

Gentlemen:

Our Mr. C. W. Ralph in his conversation with you when you were last in Seattle agreed to make some adjustment of your account, provided you were able to produce a telegram sent from this office, advising that the agency had been discontinued.

We have given you ample time in which to produce the original telegram, but so far have not received the same. Mr. Ralph now advises that he cannot wait further and we will, therefore, appreciate receiving payment of our account.

It may be possible that you received a telegram from us, advising that we could not make shipment of some large order on account of transportation, but we are positive that you did not receive a tele-

(Testimony of J. C. McBride.)

gram advising that the agency would be discontinued. Both Mr. Kelly and Mr. Clendening who were in the Seattle office at the time, are positive that no such telegram was sent.

You advised our Mr. Trew when he was in Juneau that you thought you were entitled to some adjustment, but that if the Union Oil Company insisted on payment you would let us have remittance.

Will you kindly advise us when we may look for payment.

Yours very truly,

UNION OIL COMPANY OF CALIFORNIA.

W. J. CONDLON,

District Sales Manager. [168]

Q. Mr. McBride, you testified Saturday—there was a letter introduced here Saturday which you identified, in which you stated to the Union Oil Company that you had changed the price, either reduced or increased the price of oil. Now, I will ask you if you had advice about that from the Union Oil Company? A. Yes, sir.

Q. Who controlled the price of oil. —

Judge WINN.—I object to that, if your Honor please. It's fixed by the contract. The contract is in evidence.

Mr. FAULKNER.—But there is some testimony about changing it from time to time.

The COURT.—I don't think that the first contract, as set up in the pleadings, sets forth.

Mr. FAULKNER.—Prices were changing.

(Testimony of J. C. McBride.)

Mr. KELLEY.—Well, the Seattle office made the price.

Q. Now, in the particular instance mentioned Saturday, did you have specific authority from the company to change the price of oil? A. Yes, sir.

Q. Now, I hand you a letter—I don't know what the date of it is. A. May 29, 1915.

The COURT.—What date?

The WITNESS.—May 29, 1915.

Q. From whom was that received?

A. From the Union Oil Company; Mr. Clagett, District Manager.

Q. To the C. W. Young Co.? A. Yes, sir.

Mr. FAULKNER.—We'll offer that in evidence. [169]

Judge WINN.—Object to it.

Mr. FAULKNER.—The only purpose is this: The testimony and the contracts show that the C. W. Young Company would get a cent a gallon commission on sales of oil. Now, of course, if they sold below the Union Oil Company price, I suppose they would have to stand the difference, and there has been a letter introduced here, showing that on one occasion they did that, and I want to show that they were authorized by the company.

Judge WINN.—Well, there is no question, in replying to Mr. Faulkner, that under all these agreements, the Union Oil Company was to regulate prices. But this letter that he seeks to introduce now, I think is immaterial for any purpose whatsoever—simply encumbering the record. I urge

(Testimony of J. C. McBride.)

this objection besides the other objections that I have urged heretofore. It don't tend to prove any issues or disprove any issues in the case.

The COURT.—There is no issue raised on that question. It is simply that the Union Oil Company is suing on account of oils sold by Mr. McBride or the C. W. Young Company—

Mr. FAULKNER.—The only materiality of this is this. We introduced a letter from Mr. McBride to the Union Oil Company. In that letter he mentioned changing the price on one occasion. Now, it would make a difference if he arbitrarily changed the price. It would make a difference in his commission, because naturally that would have to come out of his commission, and we would naturally have to take that into consideration in computing his commission, unless he was authorized to change the price, and I propose to show that he was authorized by the Union Oil Company [170] so that his commission would be unchanged. It is very material.

The COURT.—I don't think so. It simply changes the amount that you will be liable for to the company. It doesn't make any difference as to what the commission would be. It was a fixed commission. Objection sustained.

Q. Now, Mr. McBride, I will ask you if the C. W. Young Company furnished the Union Oil Company with a bond for the faithful performance of this contract? A. Yes, sir.

Q. In what sum, do you remember?

(Testimony of J. C. McBride.)

A. \$5,000; I think it was.

Judge WINN.—Object to that as immaterial.

The COURT.—I think so.

Judge WINN.—The Union Oil Company paid the premium.

Mr. FAULKNER.—Simply to show that that was another one of the conditions of the contract.

The COURT.—Well, no breach of it.

Mr. FAULKNER.—No, no breach of it. I simply want to show that there was another consideration furnished by the company in addition to furnishing the facilities and having their sales organization on hand.

Mr. KELLEY.—Well, that's outlined by Mr. Kelly's letter.

Mr. FAULKNER.—Yes.

Mr. KELLEY.—Says that you were to furnish the bond and the Union Oil Company to pay the premium.

The COURT.—Objection sustained.

Q. Now, I might ask you this question, Mr. McBride. Don't answer this if it is objected to. In the year 1915, did [171] the Union Oil Company qualify to do business in Alaska?

Judge WINN.—Object to it, if your Honor please.

Mr. FAULKNER.—There is a denial that they knew anything about this contract. This really is the best evidence. I could introduce the record of the Court.

The COURT.—Denial?

Mr. FAULKNER.—Denial that this contract was in effect.

Judge WINN.—Oh, no; we denied about the oral contract as set up in the pleadings.

The COURT.—So I understood—not that they knew nothing about the contract, but that they deny the terms of the contract.

Mr. FAULKNER.—Well, I thought that they denied the whole contract.

The COURT.—Well, if they deny the contract, deny the terms, of course, they deny the contract.

Mr. FAULKNER.—Well, I'll offer to prove now—I offer to introduce this for the purpose of showing that the company itself knew all about these transactions in Alaska. It isn't absolutely conclusive, but it corroborates Mr. McBride's testimony by showing that they qualified to do business in Alaska.

The COURT.—You object?

Judge WINN.—We will admit, if your Honor please, to shorten the record, that the company was qualified to do business in Alaska in 1915, 1916 and 1917. I believe that if the pleadings are not broad enough to show that the plaintiff was, we will admit it, so as to save trouble.

Mr. FAULKNER.—We also want to know who the resident agent of the company was, appointed by the company. [172]

Mr. KELLEY.—We think that Mr. McBride was.

Mr. FAULKNER.—Well, if you admit that, I will go no further into it.

(Testimony of J. C. McBride.)

The COURT.—Do you admit that?

Judge WINN.—It's our understanding that that is true. Isn't that what the record shows, Mr. Faulkner?

Mr. FAULKNER.—Yes.

Judge WINN.—Well, if that is what the record shows.

Mr. FAULKNER.—I have a great many orders here. I don't know that it is going to be material to introduce them all. Of course, if the Court thinks it is material, I can introduce these various telegrams.

The COURT.—I am not going to advise you.

Q. Mr. McBride, I will ask you if you have on hand, if the C. W. Young Company has on hand all the orders that were sent to the Union Oil Company for oil during these three years?

A. No, sir.

Q. You haven't? A. No, sir.

Q. Couldn't you tell from the records that you have what orders were filled and what orders were not filled? A. No, sir.

The COURT.—You could not?

The WITNESS.—No, I couldn't.

Q. I'll hand you some telegrams and ask you who sent those telegrams and to whom they were sent?

Q. C. W. Young Company sent them to the Union Oil Company.

Mr. FAULKNER.—Now, I'll ask, make a demand on counsel for [173] the original telegrams,

(Testimony of J. C. McBride.)

dated January 13, 1916, March 25, 1916 and July 17, 1916. We offer these three in evidence first.

Judge WINN.—We object to their introduction for the same reason as heretofore stated.

Mr. FAULKNER.—Simply cumulative and corroborative. Shows that orders were sent from time to time by telegram.

The COURT.—Objection overruled. Of course, such evidence is always subject to being connected up.

Mr. FAULKNER.—Yes.

(Whereupon said telegrams were received in evidence and marked as one exhibit, viz., Defendant's Exhibit "F-1.")

Q. These were sent from Juneau? A. Yes, sir.

(Read by Mr. Faulkner, as follows:)

Defendant's Exhibit "F-1."

Juneau, Alaska, Jan. 13, 1916.

Union Oil Company of California,
Seattle, Wash.

Ship via Northland, January 15th, one hundred fifty drums distillate, forty drums gasoline, twenty drums *maptha*, one hundred cases gasoline, twenty cases gas machine, gasoline, fifty cases Xray, three hundred cases Union kerosene. If you can possibly spare one hundred iron barrels send sixty gasoline and forty kerosene.

C. W. YOUNG CO.

(Testimony of J. C. McBride.)

Juneau, Alaska, Mar. 25, 1916.

Union Oil Company of California,
Seattle, Wash.

Ship on steamer Ravalli, sailing about March 31, one hundred fifty drums distillate, one hundred cases gasoline. Will return about two hundred empty drums on return sailing. Have oil unloaded our dock.

C. W. YOUNG CO. [174]

Juneau, July 17, 1916.

Union Oil Co. of California,
Seattle, Wash.

Ship steamer Cordova fifteen drums of gasoline, twenty-five drums distillate and we will stand difference in freight rate. This will about hold us until Wakena sails. Returning to-morrow steamer Curacao one hundred thirty empties. Be sure Wakena sails August fifth, with cargo for us.

C. W. YOUNG CO.

Q. Now, regarding this telegram of March 25, 1916, did you receive that shipment?

A. I couldn't say. I can't identify any particular shipment.

Q. Was the telegram of April 5, 1916, Defendant's Exhibit "B-1" in answer to this telegram of March 25, 1916—

Judge WINN.—(Interrupting.) Well, the telegram is part of the—

Mr. FAULKNER.—I haven't finished my question yet. I'll repeat it.

Q. Was the telegram of April 5, 1916, Defendant's Exhibit "B-1," in answer to the telegram of

(Testimony of J. C. McBride.)

March 25, 1916, Defendant's Exhibit "F-1," if you know?

Judge WINN.—Just a minute.

Mr. KELLEY.—We would like to see the two telegrams.

The COURT.—I believe one is in reference to the discontinuance.

Mr. FAULKNER.—Yes.

Judge WINN.—We think that the telegrams will show for themselves what they are. They are the best evidence. Both of them have been introduced already under our objection, and as to Mr. McBride knowing what they mean, he couldn't add to or take from the evidence or what the telegrams [175] purport to contain.

The COURT.—Objection overruled.

Q. Will you answer that yes or no?

A. Yes, sir.

Q. Here is one that I handed you a few minutes ago. It has no date on it. Do you know when that was sent. Just say yes or no?

A. I couldn't say.

Q. You couldn't say? A. No, sir.

Mr. FAULKNER.—Well, we'll not offer it.

Q. Mr. McBride, just one more question I want to ask you. Did you, on behalf of the C. W. Young Company, at any time, promise to pay the Union Oil Company the amount set forth in their complaint here, or any part of it?

A. No, sir.

Judge WINN.—What was that question?

Mr. FAULKNER.—Did he promise to pay the

(Testimony of J. C. McBride.)

Union Oil Company the amount set forth or any part of it.

Judge WINN.—We object as calling for a conclusion of the witness, and the pleadings speak for themselves, and the testimony of this witness couldn't vary the issues raised under the pleadings in this case.

Mr. FAULKNER.—The question is, did he promise to pay to them money.

The COURT.—Yes; objection overruled. He may answer.

A. No, sir.

Mr. FAULKNER.—In connecting up those letters from Mr. Condlon, regarding the telegram of April 16, there is one that was marked for identification and not introduced. [176] I will now offer this.

Judge WINN.—The same objection to that as to the other.

The COURT.—In reference to the telegram—?

Mr. FAULKNER.—Of April, 1916.

Mr. KELLEY.—The same objection heretofore made.

The COURT.—It may be received and filed.

(Whereupon said letter was received in evidence and marked Defendant's Exhibit "G-1.")

Recess until 1:30 P. M.

2 o'clock P. M., Monday, Jan. 22, 1923.

Court met pursuant to adjournment.

J. C. McBRIDE on witness-stand.

Cross-examination by Judge WINN.

Q. Mr. McBride, how long have you been at Juneau, Alaska?

(Testimony of J. C. McBride.)

A. Since— I have been here eighteen years in Juneau; 18 or 19.

Q. You testified, I think, on your direct examination, that you were president of the defendant, the C. W. Young Company in this case?

A. Yes, sir.

Q. You were president and manager of that company during all the time that these transactions took place between the Union Oil Company and the C. W. Young Company, were you not?

A. Yes, sir.

Q. And it was through you, acting on the part of the C. W. Young Company, with the Union Oil Company, that all these various transactions you have testified to concerning were had?

A. Yes, sir.

Q. But you are not now, nor have you been for the last two or three years, manager for the C. W. Young Company, have you? [177] A. No, sir.

Q. Mr. DeLong is there.

A. Has been for two years; yes.

Q. In fact, he has been handling it for the Seattle creditors, has he not? A. Yes, sir.

Q. Schwabacher and the Seattle Hardware Company? A. Not Schwabacher; no, sir.

Q. Seattle Hardware Company? A. Yes, sir.

Q. You haven't for a long time, taken any active part in the management of the affairs of the defendant company? A. Two years.

Q. And Mr. DeLong has been handling the affairs during all that time? A. Yes, sir.

(Testimony of J. C. McBride.)

Q. Mr. Naud was formerly your bookkeeper while you were president and manager of the company?

A. Not all the time, Judge. He was a bookkeeper—

Q. (Interrupting.) Over what period of time was Mr. Earl Naud bookkeeper for the C. W. Young Company, while you were in the active management of its affairs.

A. I couldn't just give you those dates.

Q. Well, approximately?

A. Well, just exactly—I don't remember just what year he came here, and then he went to war and one time when I was in Seattle, he asked if I would take him back, and I brought him back. That was in 1917, I think.

Q. Was he bookkeeper for the C. W. Young Company at all of the times that these transactions were taking place between [178] that company and the Union Oil Company? A. No, sir.

Q. About what length of that time was Mr. Earl Naud bookkeeper for that company?

A. I think it was just one year.

Q. From what date to what date, approximately?

A. I couldn't say that.

Q. What year? A. 1917.

Q. Do you know when he commenced in 1917 and when he quit? A. No; I don't.

Q. Now, Mr. McBride, in answer to a question propounded by Mr. Faulkner, you stated something about furnishing wharf facilities for the

(Testimony of J. C. McBride.)

Union Oil Company, or for some purpose, that is the dock that lies between here and Thane, is it not?

A. The dock is there, yes, sir—about a mile and a half or a mile and a quarter from town.

Q. Is it on the Juneau side?

A. On the mainland side.

Q. Huh?

A. On the mainland side.

Q. Yes.

A. Between Thane and Juneau.

Q. It's on the road between here and Thane?

A. Yes.

Q. On the mainland side? A. Yes.

Q. Is it this side, taking Juneau as the standpoint, of the Standard Oil Company's dock, or on the other side? A. On the other side. [179]

Q. Now, Mr. McBride, when did you build that dock? A. In 1915.

Q. Who drove the piles for that dock?

Mr. FAULKNER.—If the Court please, counsel objected to this line of examination when I offered to put it in, and I think I'll object to it now as incompetent, irrelevant and immaterial, to shorten up the record.

Judge WINN.—I simply want to find out when he built it.

The COURT.—He has already stated that he built it in 1915.

Q. Isn't it a fact that you built that dock and had a lot of piles driven there in 1913? A. No, sir.

(Testimony of J. C. McBride.)

Q. Didn't Bob Keeney drive those piles for that dock in 1913?

A. I don't remember who it was who drove the dock. As I recall it, Ed. Webster was the owner of the pile-driver.

Q. He did the work on the pile-driver. And wasn't that work done in 1913? A. No, sir.

Q. You are positive of that? A. Yes, sir.

Q. Wasn't the piling and the wharf constructed in 1913? A. No, sir.

Q. You're sure of that? A. Yes, sir.

Q. You know Mr. Lloyd Hill? A. Yes, sir.

Q. Mr. Lloyd Hill surveyed that site for the construction of that wharf in 1913 for you, didn't he?

A. I don't remember that he surveyed it now.

[180]

Q. Are you that careless of your affairs, Jack, that you don't remember who made the survey of that wharf down there in 1913?

Mr. FAULKNER.—If the Court please, I object to this line of questioning.

The COURT.—Objection sustained.

Mr. FAULKNER.—Simply to shorten up the record.

Q. You were connected with the construction of that wharf were you not?

A. Yes, sir; I was connected with it.

Q. Well, do you want to tell the Court and jury that you can't tell the year that that was surveyed, who surveyed it nor the year it was built?

Mr. FAULKNER.—The same objection.

(Testimony of J. C. McBride.)

The COURT.—Objection sustained.

Q. Well, did Lloyd Hill survey that?

A. I won't say as to that.

Mr. FAULKNER.—The same objection.

The COURT.—Objection sustained.

Q. You don't know who did?

The COURT.—You needn't answer until—

Judge WINN.—(Interrupting.) I want to show, if your Honor please, that the dock was constructed there before—

The COURT.—Well, you can get at it in another way. It is admitted by you that satisfactory accommodations were furnished by the defendant, and the date it was furnished, or constructed, is not material, because you objected to questions about the value of the dock and any testimony as to the value of the dock was ruled out. [181]

Q. You did state to Mr. Faulkner, on direct examination, did you not, Mr. McBride, that that wharf was built for the purpose of handling the oil of the Union Oil Company, didn't you?

A. Yes, sir.

Q. Now, isn't it a fact that it was built before you ever had any contract or agreement with the Union Oil Company? A. No, sir.

Q. And it wasn't built in 1913?

Mr. FAULKNER.—If the Court please, I don't want to keep objecting to this line of examination, and I ask that he be not permitted to go into it any further, unless we are permitted to go into it, and we were shut out.

(Testimony of J. C. McBride.)

The COURT.—Yes; the cost of the construction of the dock under the pleadings and under your objection I held was not material, because there was no basis of compensation for damages placed in the pleadings on the construction of the dock. So, if he furnished a dock, satisfactory and in compliance with his contract, that's all that is necessary to be proved in this case.

Judge WINN.—My recollection is that he testified that he built it in a certain year, if your Honor please, and I was just simply cross-examining him on it.

The COURT.—The construction of the dock is not a basis of compensation for damages in the case, and it has been admitted on your side that he furnished facilities satisfactory to the plaintiff in the case, and with reference to that part of the contract, any cross-examination on that point, as to when it was constructed, is not proper and immaterial. [182]

Judge WINN.—All right. Allow us an exception.

The COURT.—You may take your exception.

Q. Now, Mr. McBride, when did you first have any conversation with any one of the parties to whom you have referred to in your testimony, representing the Union Oil Company, concerning either one of these purported contracts?

A. It was in the early part of 1915.

Q. With whom did you have that conversation?

A. Mr. Clagett.

(Testimony of J. C. McBride.)

Q. Where? A. Seattle.

Q. Do you remember that conversation?

A. No, sir; not the exact date.

Q. Do you remember approximately?

A. It was in the early part of the year 1915. I don't remember the date now.

Q. January or February?

A. Well, I don't— Probably around the latter part of January or the first of February. I don't remember the exact date.

Q. What time did you go to Seattle from Juneau, or go to Seattle in 1915?

A. I think it was in January.

Q. Or any other place. A. It was in—

Q. (Interrupting.) What was that?

A. It was in January.

Q. Then it is probable that you and Mr. Clagett had some conversations about this matter in January, 1915? A. Yes, sir.

Q. And in February, 1915? [183]

A. Yes, sir. .

Q. How many conversations did you have with Mr. Clagett?

A. I might say that Clagett and I were very friendly and we visited always together when I was in Seattle, and we had some conversations during that time.

Q. Could you state to the Court and jury approximately how many conversations in January and March, 1915, it was that you had with Mr. Clagett concerning the Union Oil Company fur-

(Testimony of J. C. McBride.)

nishing any oil to the C. W. Young Company in Juneau? A. No; I couldn't.

Q. Where did these conversations take place?

A. Both at the company's office and at the hotel I was stopping at—the Rainier Grand Hotel.

Q. You know Mr. Trew here, don't you?

A. Yes, sir.

Q. You knew Mr. Kelley? A. Yes, sir.

Q. And you recalled the name of some other representative of that company this morning—what is his name—Condlon. Do you remember Mr. Condlon? A. Yes, sir.

Q. Were either or any of these parties that I have last mentioned present when you had these conversations with Mr. Clagett?

A. I know that Mr. Trew was, because Mr. Trew; as I have already stated, Mr. Trew—I didn't state that Mr. Trew and I were friends, but we are and were then, and, I might say, we are now. They called on me at the hotel and when I was out to their office we had conversations. I know that Mr. Trew was present at some of those conversations.

Q. You testified before in this case, did you not, Mr. McBride, [184] by deposition that was taken before Mr. Folta, here? A. Yes, sir.

Q. Didn't you testify then, before Mr. Folta, that these conversations took place with Mr. Clagett in the presence of Mr. Kelly and Mr. Trew and Mr. Clendening? A. Mr. Trew?

Q. Clendening.

(Testimony of J. C. McBride.)

A. Well, I know that some of them were in their presence.

Q. Well, these parties, Mr. McBride, were present at most of the conversations you had with Mr. Clagett concerning the shipping of oil to Juneau by the Union Oil Company, were they not?

A. Regarding the contract I made with Mr. Clagett; yes, sir.

Q. They were. And those conversations took place in the office of the Union Oil Company in Seattle? A. Yes; and at the hotel.

Q. Now, when was the last conversation that you had with Mr. Clagett, when these other three gentlemen were present, concerning the shipping of oil to Juneau by the Union Oil Company?

A. I couldn't state that.

Q. Well, could you state to the jury how late in 1915 it was, in what month?

A. Well, I wouldn't say. Late, in October, 1915, I went to Seattle regarding this oil contract, and I wouldn't state now that these gentlemen were—I don't recall that they were or were not present at that time.

Q. That was in October, 1915? A. Yes.

Q. But now they had been shipping oil to you?
[185] A. Yes, sir.

Q. As representative of the C. W. Young Company, for a long time before October, 1915?

A. Yes, sir.

Q. All of a year? A. Yes, sir.

(Testimony of J. C. McBride.)

Q. The principal shipments of oil and greases from that company to the C. W. Young Company, had taken place prior to October, 1915, had it not?

A. Yes, sir; I understood you, Judge, to ask me when was the latest I had a conversation with him in 1915, and I was just trying to answer your question.

Q. Oh, no. Well, I'll make that more definite. On this trip you were down there in January and February and part of March, were you not, in 1915?

A. I think that was the time. I don't just remember the exact dates, but it was the early part of 1915.

Q. Well, how long did you stay in Seattle?

A. I don't remember that.

Q. Do you remember what month it was in 1915; that is, January, February or March, and the date, the last conversation that you had with these three gentlemen, or with Mr. Clagett, concerning the shipment of oil to Juneau?

A. No; I don't remember that—the last conversation.

Q. You evidently stayed in Seattle until the first of March, 1915, didn't you?

A. I don't remember the dates—just what date it was.

Q. Well, now, Mr. McBride, you identified an exhibit that has been offered in this case, which was dated on the date of March 1, 1915, the origi-

(Testimony of J. C. McBride.)

nal I haven't—I have a copy— [186] I'll withdraw that last question. I'll ask you Mr. McBride another question. The Kelly whom you state was present at these various conversations that I have asked you about, is not Mr. Kelley, the attorney here, is it? A. No, sir.

Q. Mr. V. H. Kelly.

A. I think that's his name. I think his initials are V. H.

Q. Now, I asked you something about a letter which you claim was written to you by Mr. Clagett, under date of March 1, 1915. It has been offered in evidence in this case and marked Defendant's Exhibit "A"; and I will ask you to look at it and refresh your mind and state as to whether or not you were not in Seattle at the time that letter was written and were stopping at the Rainier-Grand Hotel?

A. Yes; I received that letter at the Rainier-Grand.

Q. And prior to the writing of this letter to you by Mr. Clagett you had had several conversations with him, in the presence of Mr. V. H. Kelly and Mr. Trew here, and Mr. Clendening?

A. Well, my conversations mostly were with Mr. Clagett.

Q. Didn't you say awhile ago that Mr. Kelley, Mr. Clendening and Mr. Trew were present at most of those conversations?

A. I don't know just what I said, but I say that most of my conversations—they were, at times,

(Testimony of J. C. McBride.)

present, but most of my conversations, all of my conversations were with Mr. Clagett.

Q. Is it not a fact that these other three parties that I have just mentioned, were present when matters that were material to the shipment of oil to Juneau, were talked over?

A. Well, not at all times; no, sir.

Q. Not at all times. [187] A. No, sir.

Q. Now, you have read over this exhibit that I have just shown to you, which is in the form of a letter from Mr. Clagett to you, and he states there, "In confirmation of our various conversations in the past, and referring particularly to phone conversation with you this morning, I take pleasure in stating that we are now ready to ship oils to Juneau," and so forth. Now, you had had several conversations with Mr. Kelly, with Mr. Clagett and these other parties before he had written you that letter, hadn't you? A. Yes, sir.

Q. You had talked over the various matters contained in that letter, had you not?

A. With Mr. Clagett.

Q. Yes. And sometimes these other three parties that I have mentioned would be present, would they not?

A. Well, Judge, I might say this—

Q. Well, just answer my question. Were the other parties present or not? I want a direct answer.

A. They were at times; yes, but not through any agreement. The agreement that I made with Clag-

(Testimony of J. C. McBride.)

ett, we made it together, and I don't think that these men were present at that time. Mr. Clagett made the agreement for the Union Oil Company with me, and as I say now, we were all friendly and we called in there—

Q. (Interrupting.) I don't care about that dissertation.

A. I was just trying to explain to you—

Q. Yes; but isn't it a fact that most of the conversations that took place relative to this agreement or understanding which was arrived at, concerning the shipment of oil in 1915 and [188] 1916 up here, that at those conversations Mr. Clagett and these other three parties that I have mentioned were present? Didn't you state that a few moments ago?

A. Oh, I don't think I did state that they were there most of the time. They were there at times, but my business was all with Mr. Clagett.

Q. And you talked over, then, with Mr. Clagett, but not with the other three parties, the various matters that are set up and referred to in these letters or rather the letter which is marked Defendant's Exhibit "A" in this case, which I have just shown to you? A. Yes, sir.

Q. How long did you stay in Seattle after you received that letter?

A. That I couldn't say; not very long, Judge.

Q. You got the matters fixed up and came to Juneau? A. Yes, sir.

(Testimony of J. C. McBride.)

Q. Now, Mr. McBride, Mr. Faulkner has gone over with you a good many matters, and I don't expect to cover all of them, but I do wish to refer you to the bill of particulars that has been filed in this case and verified by you and question you something concerning it. Have you a copy of that bill of particulars?

A. I don't believe I have, just at the moment.

Q. (Handing paper to witness.) The first item on this bill of particulars is, or are, those items concerning the Hoonah Packing Company at Hoonah, and you have set forth there, in 1915, 1916 and 1917, various kinds of products that you claim that you might have disposed of to that company. With whom did you have your conversation concerning the furnishing [189] of those products for the years 1915 and 1916, as set forth in this bill of particulars? A. C. J. Alexander.

Q. What time and where was it that you had a conversation with C. J. Alexander?

A. My first conversation with him was in 1914, here in Juneau.

Q. In 1914? A. Yes, sir.

Q. At what place and when, do you remember?

A. In my office.

Q. In your office. Was anybody else present, or was it just you and Mr. C. J. Alexander?

A. I don't remember that. There might have been someone in the office, but I would say that it was just the two of us.

(Testimony of J. C. McBride.)

Q. That was in 1914. That was prior to the time of the alleged contract of 1915-1916-1917, wasn't it? A. Yes, sir.

Q. Was this conversation that you had with Mr. C. J. Alexander, who is commonly known as "Kinky" Alexander, in 1915, or in 1914, concerning this matter, the only conversation you had with him about it? A. The only one? No, sir.

Q. The only conversation.

A. Only one? No, sir; it wasn't.

Q. How many times during, say, 1915, did you have any conversations with him?

A. Well, my conversation with him in 1915, was in the early part of the year, regarding the contract.

Q. That first conversation was in 1914?

A. Yes, sir. [190]

Q. Your second one was in 1915? A. Yes, sir.

Q. Did you have conversation concerning the matter in 1916? A. Yes, sir.

Q. With C. J. Alexander? A. Yes, sir.

Q. And in 1917? A. Yes, sir.

Q. Where was he, at each one of these conversations, these respective years, when you had these conversations with him? A. Mostly in Juneau.

Q. Mostly in Juneau. A. Yes, sir.

Q. Did you enter into any writing concerning any matters about furnishing the Hoonah Packing Company, which Mr. Alexander represented, any oils, for any one of these years?

A. Not at that time.

(Testimony of J. C. McBride.)

Q. Did you ever have? A. Some contract?

Q. Yes. A. No, sir.

Q. How was it that you arrived at the fact that you have set forth in this bill of particulars and which you have testified to concerning, that, for instance, during the year 1915, that you could have furnished the Hoonah Packing Company 50,000 gallons of refined oil and 2,500 gallons of lubricating oils? A. That's what he told me.

Q. He told you that in 1914 or in 1915.

A. Both years. [191]

Q. 1914. Don't you know that Mr. Alexander didn't get any oil from you, that he bought it from the Standard Oil Company during the year of 1915, and had a contract with them?

A. Well, I know that he didn't get any from me.

Q. But he told you in 1914 and before you had the agreement with the Union Oil Company, that he would, in 1915, take these respective amounts of oils that I have enumerated for you, in the year 1915? A. Yes, sir.

Q. Now, then, in 1916, Mr. McBride, you have set forth in your bill of particulars, pertaining to this Hoonah Packing Company, that you could have sold 50,000 gallons of refined oil and 2,500 gallons of lubricating oil. The matter concerning this transaction was a mere conversation between you and Mr. Alexander?

A. It was a conversation; yes, sir.

Q. When did that conversation take place?

(Testimony of J. C. McBride.)

A. While I was in Seattle again, the following year. Late in the fall we talked about the matter; then again in Seattle, regarding the delivery of oils to him.

Q. That was regarding his taking oil from you in 1916? A. Yes, sir.

Q. I'm just questioning you about 1916.

A. Yes; I understand.

Q. Did he specify to you the exact number of gallons that he would take from you for the Hoonah Packing Company for 1916? A. Yes, sir.

Q. What did he tell you he would take?

A. He told me he would take 50,000 gallons of refined oil.

Q. And how much of the other—lubricating oil? [192] A. 2,500 gallons.

Q. He didn't take it? A. No, sir.

Q. Don't you know that he had a contract with the Standard Oil Company for oil during that year, 1916? A. No; I don't know.

Q. He got his oil from the Standard Oil Company? A. Well, I couldn't deliver it to him.

Q. Well, he didn't get any from you?

A. No; he didn't.

Q. Did he take any boat up there and demand any of you? A. Yes, sir.

Q. How many times? A. Oh, several times.

Q. Where and on what occasions?

A. I don't know just the dates.

Q. You don't know the dates? A. No, sir.

Q. You don't know the amount that he wanted?

(Testimony of J. C. McBride.)

A. No; he would come for a cargo of oil and I don't know just what the cargo would be.

Q. What kind of oil? A. Refined oil.

Q. What kind of refined oil? A. Distillate.

Q. You have looked over this letter of Mr. Claggett's which has been offered in evidence in this case and marked Defendant's Exhibit "A," where he enumerates certain kinds of oil that he might be able to ship to the C. W. Young Company. Can you look over that exhibit and state to the Court and jury [193] what kind of oils it was for 1915 and 1916 that you had a contract for, or that you had this conversation with Mr. Alexander about taking, for those respective years?

A. The kind of oil?

Q. The kind of oil that is enumerated in this exhibit "A." There are several kinds there.

A. Well, it was refined oil and lubricating oil.

Q. Yes, but there are several kinds of refined oil and lubricating oil in this agreement.

A. Yes.

Q. Can you tell the Court and jury what kind of oil this conversation referred to?

A. I couldn't tell you the details; just the gallons, as to the number of gallons and the kinds of oil he would take; not the number of gallons of each kind of oil.

Q. Either for 1915 or 1916? A. No, sir.

Q. Well, did you have any conversation with him about furnishing oil, you furnishing him oil, refined oil or lubricating oil for the year 1917?

(Testimony of J. C. McBride.)

A. Yes, sir.

Q. Where did that conversation take place?

A. Here and in Seattle.

Q. What did he say to you?

A. He agreed to give me an order for the number of gallons that I specified there, if I could deliver it.

Q. You remember that as far back as 1914, just the exact number of gallons that he promised he would take? A. Yes, sir.

Q. Depending on your memory entirely, are you?

A. Yes, sir. [194]

Q. Also depend on your memory for what you say he spoke to you about that he would take for the year of 1917? A. Yes, sir.

Q. Don't you know that he had a contract with the Standard Oil Company and that the Standard Oil Company furnished him oil for 1917?

A. Well, I have a letter from him in which he verifies those figures. I don't know as I had a contract with him, but he had a contract with me and verified it.

Q. Is that letter in evidence here?

A. Yes, sir.

Q. Well, that letter speaks for itself. You don't remember the date and the exhibit number of the letter? A. Yes.

Q. This one isn't in evidence, is it?

Mr. FAULKNER.—It isn't in evidence yet.

Q. Well, I don't want to question you about any

(Testimony of J. C. McBride.)

letter that is not in evidence yet. I'll just withdraw that question for the time being.

Q. You or Mr. Faulkner has handed me a letter here that you say verifies the figures. Is this the letter? A. Yes, sir.

Judge WINN.—Well, I would like to have this letter properly identified as part of the cross-examination— Well, I'll give you the date so that if we refer to it hereafter— That's dated February 4, 1922, isn't it, that you refer to? A. Yes, sir.

Q. Well, have you had any correspondence with Mr. Alexander concerning this oil that you say would verify your statement covering the years of 1915, 1916 and 1917—any [195] letters or correspondence?

A. I didn't just hear the first part of that?

Q. I say, you have no letters in your possession that was written you by Mr. Alexander, during the years of 1915, 1916 and 1917?

A. No, I haven't.

Q. The only one that he wrote you is the letter that you have identified there? A. Yes, sir.

Q. It being under the date of February 4, 1922.

A. Yes.

Q. Now, the next item on the bill of particulars, Mr. McBride, that you have furnished us and which you have sworn to, is the Hoonah Packing Company, "Gambier" marked underneath it. That means the Hoonah Packing Company's cannery at Gambier Bay does it not? A. Yes, sir.

(Testimony of J. C. McBride.)

Q. And you claim in your bill of particulars here, an item of refined oil for the year of 1917 only?

A. Yes.

Q. And also lubricating oil for the year of 1917 only, and it is 40,000 gallons and 2,000 gallons respectively, of those particular products. Who did you have a conversation with about this oil?

A. Howard Bailey.

Q. Howard Bailey.

A. He's superintendent of the Gambier cannery.

Q. Where was Howard Bailey when you had this conversation? A. This was in Seattle. [196]

Q. In Seattle. What time was it in 1917 that you had this conversation with Mr. Bailey?

A. It was in the early spring or in the winter-time.

Q. Of 1917? A. Yes, sir.

Q. Where was it that you had the conversation?

A. Just at what particular place?

Q. Yes, sir.

A. Well, I don't know just exactly where it was.

Q. Who was present when you had the conversation with him? A. I don't think anybody was.

Q. What did he say to you or what did you say to him?

A. Which question do you want first?

Q. Either way. I don't care which.

A. You asked me what I said to him?

Q. Either way.

The COURT.—He wants the details of the conversation.

(Testimony of J. C. McBride.)

A. Well, it was just a business conversation. I asked him if I could furnish him the oil, would he take it, and he said that he would, and I said that I would be glad to furnish him if he would take it.

Q. And he didn't take it, did he? A. No, sir.

Q. Did you have any other conversation with him about this after that time?

A. I may have had several with him during my visit to Seattle. I saw him quite frequently.

Q. How long did you stay in Seattle on this visit you made to Seattle in 1917, the time you had this first conversation with Mr. Bailey?

A. I don't know how long I was there. [197]

Q. You don't have any idea when you returned?

A. I was down there just a part of the winter; just down on a business trip. That was all.

Q. Did you have any further or other conversations with Mr. Bailey concerning this matter during the year 1917? A. We talked about it; yes.

Q. Where? A. Here in Juneau.

Q. How many times and what place?

A. Oh, I don't know how many times, Judge.

Q. What kind of oil, as classified under this letter of Mr. Claggett's, which is exhibit "A" of defendant, did your conversation with Mr. Bailey refer to? A. Refined oil?

Q. Yes. A. Well, I'd like to see this.

Q. What kind of refined oil?

A. That is the same statement. I don't know how it— That would be refined oil?

(Testimony of J. C. McBride.)

Q. Yes. A. Distillate.

Q. What kind of distillate? There's several kinds of distillate and refined oil.

A. There is only one kind of distillate, Judge.

Q. Is that the cheapest grade? A. Yes.

Q. What was the price of it at that time?

A. I don't know; I couldn't tell you.

Q. Well, the prices that are given in this letter to you, which is Mr. Clagett's letter of the date I have mentioned and [198] marked Defendant's Exhibit "A," sets forth the prices of the various sorts of lubricating oil and refined oil that they had on hand and of which they might possibly ship some to Juneau, does it not? A. I don't know.

Q. It states it, doesn't it, Mr. McBride?

A. Yes; it states distillate ten cents; bulk ten cents.

Q. Is that the value— I'll withdraw that. Is that the kind of oil that you had a conversation with Mr. Bailey about? A. Yes, sir.

Q. That is the kind? A. Yes, sir.

Q. What kind of lubricating oil was he to take? There is more than one kind?

A. More than one kind; yes.

Q. Which kind, do you know?

A. No; I don't.

Q. You don't remember? A. No, sir.

Q. That wasn't specified?

A. No; it wasn't—the number of gallons—no, sir.

Q. Did Mr. Bailey specify the number of gallons that he would take from you in 1917?

(Testimony of J. C. McBride.)

A. Yes, sir.

Q. Now, Mr. McBride, you have lived in Juneau quite a long time and have been actively engaged in business and are somewhat acquainted with the general operation of canneries in Alaska, are you not?

A. Well, just in a general way; yes. [199]

Q. Don't you know that it is impossible for any canneryman to tell in advance as to how much refined or lubricating oil he is going to use in any particular season? A. No; I don't.

Q. Now, you had this conversation with Mr. Bailey in 1917, early in that year, in Seattle?

A. Yes, sir.

Q. The fishing season for 1917 hadn't opened, had it? A. No, sir.

Q. You didn't know, and he didn't tell you, did he, how many boats he was going to run or how much lubricating oil he was going to need for the fishing boats, or anything?

A. He didn't tell me how much oil he was going to need or what he was going to use in his cannery.

Q. But he come out and told you that he would take forty thousand gallons of refined oil and two thousand gallons of lubricating oil? A. Yes, sir.

Q. That, then, in 1917, was before you had signed the contract that has been offered in evidence in this case—is relied upon as the contract between the C. W. Young Company and the Union Oil Company, was it not?

(Testimony of J. C. McBride.)

A. Well, that contract wasn't signed. The contract wasn't signed. It's dated February 14, I think, but the contract really wasn't signed, as I understand it, as I recall our letters, until the middle of the year.

Q. But it was here in your office.

A. It was going back and forth in the mails.

Q. That contract had been sent you, and it was received by you, wasn't it? [200]

A. Yes, it was received by me, but it was going back and forth in the mails. We had a little correspondence about it.

Q. These conversations you had with Mr. Bailey were prior to the time that you signed this—

A. (Interposing.) Yes, sir.

Q. (Continuing.) Contract for 1917?

A. Yes, sir.

Q. Was all this oil that Mr. Alexander said that he wanted and that Mr. Bailey said he wanted, to be taken at one time or various times?

A. Various times.

Q. Various times. No designation was made as to how much was to be taken at any particular date, either with Mr. Alexander or Mr.—

A. No, sir.

Q. What was the other man's name?

A. Bailey; Howard Bailey.

Q. Or Mr. Bailey. A. No, sir.

Q. This Mr. Alexander that you refer to and Mr. Bailey, their depositions are filed in this case, are they not?

(Testimony of J. C. McBride.)

A. I understand they are. I haven't seen them.

Q. Well, the only Howard Bailey that you had any contract with, or any conversation with, concerning oils and greases for the year of 1917, his name was Howard, in 1917? A. Yes, sir.

Q. And the only conversation that you had concerning the Hoonah Packing Company was with C. J. Alexander? A. Yes, sir.

Q. As to whether or not their depositions are on file here, you don't know? [201]

A. I haven't seen them.

Q. The next one on your bill of particulars is the Taku—it's "Can," C-a-n, and Cold Storage Company. The real name is the Taku Canning & Cold Storage Company, is it not, Mr. McBride?

A. Yes, sir.

Q. Where was that cannery?

A. I didn't hear that.

Q. I say, where was that cannery located?

A. At Taku Harbor.

Q. It's the same old cannery that's at Taku Harbor now?

A. Yes; known as Libby, McNeill & Libby.

Q. Libby, McNeill & Libby; yes. And you say that, or set forth in your bill of particulars, that during the years of 1915, 1916 and 1917, that you had some sort of arrangement by which you were to furnish that company with 40,000 gallons each for those years of refined oils and 2,000 gallons each year of lubricating oil? A. Yes, sir.

(Testimony of J. C. McBride.)

Q. Well, with whom did you have this conversation? A. John Carlson.

Q. Where? A. Here and in Seattle.

Q. Where did you have the conversation with him about furnishing oil for 1915 and 1916?

A. In Seattle.

Q. Just briefly, what was the nature of that?

A. Well, it was just a business talk, that if I could—I asked him if I couldn't sell him his oils for the coming year, and he said, yes; that I could. [202]

Q. You remember what time it was in 1915 that you had this conversation with him, Mr. McBride?

A. No; I don't. It was when I was in Seattle.

Q. Did he make a contract then? I withdraw that. It was early in 1915 that you had the conversation with John Carlson. Now, was that conversation concerning the furnishing of the Taku Canning & Cold Storage Company with refined oils and lubricating oils for the years 1915, 1916 and 1917? A. Yes, sir.

Q. Carlson is dead, isn't he? A. Yes, sir.

Q. John Carlson is dead. You remember how long he has been dead?

A. I think, as I recall it—I wasn't here when he passed away—but I think it was in 1921, and that he died here.

Q. Well, since 1917? A. Oh, yes; yes.

Q. Do you know when he quit running the Taku Harbor cannery, and when he sold out to Libby, McNeill & Libby, or to some one else?

(Testimony of J. C. McBride.)

A. No, sir; I don't.

Q. You don't know what year he disposed of it?

A. No.

Q. Was all this oil for these respective years, both refined and lubricating oils, to be delivered to Carlson in one bulk?

A. No, sir; I was to deliver the oil to the cannery.

Q. Well, were they to take it in one bulk?

A. No, sir. [203]

Q. What kind of oil and greases specified in Defendant's Exhibit "A," was it that Mr. Carlson was to take 40,000 gallons and 2,000 gallons of respectively, for the years 1915, 1916 and 1917.

A. Distillate and lubricating oil.

Q. The prices quoted in Mr. Clagett's letter, which is exhibit "A" in this case of the defendant, are substantiall correct for all those oils, are they not? A. Yes, sir.

Q. Now, that letter was written in 1915. Didn't the price of the oils to be furnished, both refined and lubricating oil, didn't the price go up or go down in the years 1916 and 1917, of those kinds of oils that you are speaking about?

A. They advanced.

Q. They advanced? A. Yes, sir.

Q. When the war was on? They advanced, I say, after the war was on? The war commenced in 1914.

A. Well, I suppose the war did have something

(Testimony of J. C. McBride.)

to do with it. I don't know. However, they advanced.

Q. How much did they advance in 1916, do you know? A. No, sir.

Q. How much did they advance in 1917?

A. I couldn't tell you that.

Q. The lowest rate during the years 1915, 1916 and 1917 was in 1915?

A. I wouldn't say that either. I don't recall the prices.

Q. Was it agreed upon as to what kind of oil it was that Carlson was to take, which one of those grades specified in Defendant's [204] Exhibit "A," Clagett's letter? A. Lubricating oil.

Q. What kind of refined and what kind of lubricating oil Carlson was to take?

A. Yes; distillate and refined oil. I don't know the number of gallons of each kind exactly.

Q. Distillate is quoted there in 1915 at what, Mr. McBride, 10 cents a gallon? A. In 1915?

Q. Yes. A. Distillate, 10 cents a gallon.

Q. And lubricating oil what?

A. Well, you want me to read—?

Q. No; what kind of lubricating oil were you to furnish him there?

A. I don't know just what, I couldn't tell what he would use.

Q. And then the price of oils for the following years advanced in price? A. Yes, sir.

Q. Now, then, the next item pertains to the Chichagoff Mining Company, in which you set forth

(Testimony of J. C. McBride.)

in the bill of particulars refined oils for the years 1916 and 1917, 25,000 gallons in each one of those years and lubricating oil for each one of those years, 1250 gallons. With whom did you have a conversation concerning these amounts of oil?

A. Mr. Freeburn; Jim Freeburn.

Q. Don't you know that during the years 1916 and 1917, that the Union Oil Company had a contract with Mr. Freeburn and his company to furnish him these oils and greases from Seattle?

[205] A. Furnish it from here.

Q. Did you see that contract? A. No, sir.

Q. They did enter into a contract with the Union Oil Company at Seattle, didn't they? That is, Freeburn did for the Chichagoff Mining Company?

A. I don't know what his office did, Judge.

Q. You don't know what the agreement was?

A. No.

Q. You wasn't present at the time that Freeburn had any conversation or agreement with any of the representatives of the Union Oil Company concerning this refined and lubricating oil for the years which I last mentioned? A. No, sir.

Q. Now, the next is a smaller item. The Auk Bay Salmon Company, for which you have an item, for 1917, of refined oil 30,000 gallons and for the same year, 1500 gallons of lubricating oil, not specifying any—I mean this is specifying it all. With whom did you have any conversation concerning this matter? A. Billy Carlson.

Q. Who was Billy Carlson?

(Testimony of J. C. McBride.)

A. He was part owner and manager of the Auk Bay Salmon Canning Company.

Q. And the only understanding that you had with Billy Carlson, as a representative of the Auk Bay Salmon Company, was a conversation, was it?

A. Yes, sir.

Q. When was that?

A. That was in Seattle. [206]

Q. What time in Seattle?

A. When I went down in the early part of 1917.

Q. Well, won't you say what month?

A. No, sir; I don't remember.

Q. Wouldn't say whether it was January, February or March? A. No, sir.

Q. You don't know whether it was before or after the presentation to you of the contract, which I think was finally signed by you on the part of the C. W. Young Company and also signed by the Union Oil Company, for the year 1917? That is, was this conversation you had with Carlson before— A. (Interrupting.) It was before.

Q. He was to receive the same kind of lubricating oil in 1917 and the same sort of refined oil that these other parties were to receive?

A. Yes, sir.

Q. In bulk or at different times?

A. I might explain, so far as bulk is concerned, that it comes in tanks. We called it bulk.

Q. I mean was he to take it all at one time?

A. Oh, no; different times.

Q. Huh? A. Different times.

(Testimony of J. C. McBride.)

Q. You don't know whether Billy Carlson's deposition was filed in this case or not, do you?

A. I understand that it is.

Q. There was only one William Carlson that you had any conversation with concerning the furnishing of any oils to the Auk Bay Salmon Company for the year 1917? A. Yes, sir. [207]

Q. Now, Mr. McBride, without looking at the bill of particulars, can you tell me how much refined oil and how much lubricating oil you were to furnish the National Independent Fish Company for either of the years of 1915, 1916 and 1917, without referring to your memoranda from the bill of particulars or other source? Can you tell me that?

A. Well, I think I remember it from the bill of particulars as 20,000.

Q. You remember it by the bill of particulars. Now that bill of particulars of yours is signed on the 30th day of January, 1922. Then you remember, by reason of what you set forth in that bill of particulars, as to what you were to furnish to this National Independent Fisheries Company, do you? How did you arrive at it in 1922? that is, when you made out the bill of particulars?

A. To make out this bill of particulars?

Q. Yes, sir.

A. I arrived at it through orders and from memory.

Q. You didn't have any orders from Billy Carlson? A. No, I did not; not written orders.

(Testimony of J. C. McBride.):

Q. There is where you had oral orders?

A. Oral.

Q. Oral conversations? A. Yes, sir.

Q. Then, so far as Carlson is concerned, you had to depend on your memory. And what about the National Independent Fisheries? Did you depend on your memory for that? A. Yes, sir. [208]

Q. Now, then, I think, Mr. McBride, that you testified concerning this item, or these items of oil that you were to furnish the National Independent Fisheries Company for the years 1915, 1916 and 1917, on your previous examination in this case, didn't you? A. That was— I didn't—

Q. (Interrupting.) That is, I say, you testified on your previous examination in this case about the amount of oils, lubricating and refined oil that you were to furnish the National Independent Fisheries Company for the years 1915, 1916 and 1917, didn't you?

A. Well, do you mean the deposition you took?

Q. Yes, sir. A. Well, did I—

Q. (Interrupting.) Didn't you testify concerning it? You remember that?

A. You took a deposition from me; yes.

Q. And you testified concerning it?

A. To the number of gallons?

Q. Yes. A. Yes, sir.

Q. For the Independent National Fisheries Co.?

A. Yes.

Q. What was that company to use that oil for, Mr. McBride, do you know?

(Testimony of J. C. McBride.)

A. In my opinion, to supply their boats.

Q. What boats did they have here in 1915, 1916 and 1917?

A. They had the "King & Winge," "Scandia" and the "Idaho," I think.

Q. And that oil was to be furnished for those boats? A. Yes, sir. [209]

Q. Now, don't you know that neither one of those boats which you have mentioned just now, that that oil was to be furnished to, ever came to the port of Juneau in the years 1915 or 1916 and got any oil, or demanded any oil from anyone here?

A. I can remember time and again that they were turned away from the dock down there.

Q. Don't you know that in 1915 and 1916 those boats were being operated out of the town of Ketchikan, engaged in the fish business between Ketchikan and Seattle in those two years?

A. Yes, and out here on the Sound, via Juneau.

Q. How?

A. They fished out here in the Gulf of Alaska and came via Juneau.

Q. Do you remember any specific instance in 1915 and 1916 that you could have sold the "King & Winge" or the "Scandia" one ounce of oil?

A. Yes, sir,

Q. You do? A. Yes, sir.

Q. What date?

A. I don't know. I have turned them away time and again.

(Testimony of J. C. McBride.)

Q. With whom did you have any conversation with?

A. With the captain of the boats. They called at our dock.

Q. Who was the captain of the boats?

A. I don't know their names.

Q. You are positive that they called at your dock in 1915 and 1916 and wanted oil? A. Yes, sir.

Q. Don't you know as a matter of fact that neither one of those [210] boats was ever in this port during the years 1915 and 1916?

A. No, sir; no such thing.

Q. Don't you know that in the year 1917, when you claim that you had a conversation with somebody about selling them oil, that they had a contract with the Standard Oil Company for that year and that they bought every ounce of their oil from the Standard Oil Company?

A. Yes; and I can show you on our books where I sold them oil and they wanted more, and I can show you—

Q. (Interrupting.) Well, I asked you. Who wanted more? Who was it? A. These boats.

Q. Who? A. I don't know the captain's name.

Q. You know the date? A. No; I don't.

Q. You don't know when?

A. Yes, I do—the years. And I can recall—

Q. (Interrupting.) Will you swear that those three boats, the "King & Winge" and the "Scandia" and the other one were up here and demanded oil in 1915 and in 1916 and 1917? A. Yes, sir.

(Testimony of J. C. McBride.)

Q. How many times you don't remember?

A. No, sir.

Q. The dates you don't remember? A. No, sir.

Q. The man who made the demand you don't remember?

A. I don't remember the captain's name.

Q. And you don't remember the gallons they asked for?

A. Well, I do, practically each time. [211]

Q. Practically. Did you set it down in writing, or do you depend on your memory?

A. I'm depending on my memory.

Q. Depending on your memory? A. Yes.

Q. The National Independent Fisheries Company is still in business in Juneau, isn't it?

A. I don't know.

Q. Do you know whether or not the Union Oil Company had a station for oil during the years of 1915 and 1916 in Ketchikan?

A. I wouldn't say what year. I know they had a station there, but I wouldn't say what year.

Q. Well, now they had a station down there at Ketchikan at the same time that you had your station here for the Union Oil Company?

A. Yes; they did. I don't know whether it was the same years, but they had a station there.

Q. And you want to state that they were trying to get oil from the Union Oil Company's dock here in 1915 and 1916, and was getting all their oil either at Ketchikan during those years or from the Standard Oil Company?

(Testimony of J. C. McBride.)

A. I don't know what they did at Ketchikan. I'm just telling you what they did here.

Q. Do you remember in 1915 and 1916 what month it was that they ever called in here to get any oil? A. No, sir.

Q. Couldn't give the month? A. No, sir.

Q. Never made any memoranda of it at all? [212]

A. No, sir. Several different times those boats came in.

Q. You made up this bill of particulars in 1922, less than a year ago, didn't you?

A. It is just a year ago this month that I made it out.

Q. You made it up with the assistance of Mr. Roden, attorney in the case, too? A. No, sir.

Q. Just made it up yourself?

A. I had Naud's time for a little while, but I made it up practically myself; yes, sir.

Q. Made it from memory?

A. Memory and orders that I had.

Q. What kind of oil was it you were to sell to the "King & Winge" during the years of 1915, 1916 and 1917? A. Refined and lubricating oil.

Q. With whom did you have any conversation that you furnished them, or were to furnish them with these respective amounts of oil for the years 1915, 1916 and 1917? A. With the captain—

Q. (Interrupting.) 20,000 gallons each one of those years of refined oil and 1,000 gallons of lubricating oil. With whom did you have those conversations?

(Testimony of J. C. McBride.)

A. With the captain of the boat.

Q. You don't know who the captain was and can't recall his name?

A. I don't recall his name right now.

Q. He was going to take it on board all at one time? A. No, sir.

Q. He wasn't going to do that? A. No, sir.

Q. Now, these various corporations that I have just gone over [213] with you, which are enumerated in your bill of particulars, were they to pay cash or buy the oil on time?

A. It was the regular business terms—on time.

Q. What do you mean? What terms are regular business terms? A. Thirty or sixty days.

Q. Well, in your conversations with them, did you agree to give them thirty or sixty or ninety days' time, or whatever it was that you—

A. (Interrupting.) With the cannerymen I never had any understanding. They would come in and get the goods and they might pay cash then and then again they might not pay until the end of the year. That is what I have carried over into the next year.

Q. The next item is the Pacific-American Fisheries, and your bill of particulars shows— Well, I'll not refer to. Can you remember now, without looking at the bill of particulars, how much refined and lubricating oils and what years you were to furnish them in—the quantity and quality?

A. 30,000 gallons.

(Testimony of J. C. McBride.)

Q. You have gone over the bill of particulars quite frequently, Mr. McBride, so you can remember the amounts from memory, have you?

A. I haven't gone over this bill of particulars so often.

Q. With whom did you have any conversation about furnishing the Pacific-American Fisheries Company this 30,000 gallons of refined oil during the years of 1915, 1916 and 1917, and during each year 1500 gallons of refined oil?

A. That was with Mr. Forbes and his superintendent, Mr. Ryan.

Q. Where was it you had this conversation?

A. Here in Juneau and in Seattle. [214]

Q. Where was the first conversation you had with Mr. Forbes?

A. I went into the matter with Mr. Forbes the same as I did with all the other cannerymen, in 1914, regarding the handling of oil.

Q. Mr. Forbes told you in 1914 that he would, for the years 1915, 1916 and 1917, take of you 10,000 gallons of refined oil for each of those years and 1500 gallons of lubricating oil, did he?

A. Well, now, Mr. Ryan—

Q. (Interrupting.) Well, now, did Mr. Forbes tell you that? A. Well, I want to explain that.

The COURT.—You can answer yes or no and then make your explanation.

A. Because—

Q. I don't want "because."

(Testimony of J. C. McBride.)

The COURT.—Just wait a moment. Let him explain.

A. I want to explain these figures. During that time, some time—I don't recall just when it was—Mr. Forbes dropped dead and then Mr. Ryan took his place, so as I recall it now it was with Mr. Forbes and Mr. Ryan. I just wanted to make my statement plain; that was all. And I don't know what year it was that Forbes died.

Q. But you did have a conversation with Mr. Forbes in 1915, in which conversation he said to you, "Well, Jack, I'll take from you, for the Pacific-American Fisheries Company, for the years of 1915, 1916 and 1917, the different items or products" mentioned in the bill of particulars?

A. Yes, sir.

Q. You had that in 1914, that conversation?

A. Yes, sir. [215]

Q. You don't remember what year Mr. Forbes died? A. No; I don't.

Q. Where did you have any conversation with Mr. Ryan? A. Here in Juneau.

Q. When was that?

A. Well, it would be before Mr. Ryan went below, because Ryan lived in California.

Q. Well, before he went below in 1915, 1916 and 1917?

A. 1916 and 1917, he was superintendent out there.

Q. At what cannery? A. Excursion Inlet.

Q. What years?

(Testimony of J. C. McBride.)

A. Well, I always—I don't know whether he was called—Forbes was general manager and Ryan had been with him for a number of years, but I don't know what years, or just what he was called.

Q. Mr. Forbes was the general manager of all the canneries of the Pacific-American Fisheries that were in Alaska at that time?

A. That is, later he was.

Q. Later.

A. But originally Mr. Forbes was superintendent here in Alaska of the cannery at Excursion Inlet.

Q. Was he just superintendent of the Excursion Inlet cannery at the time that you had this conversation with him in 1914? A. Yes.

Q. Do you know when he ceased to be superintendent of that cannery later and became general superintendent or general manager of the Pacific-American Fisheries Company's canneries in Alaska? [216] A. No, I don't remember.

Q. In and during what years was Mr. Ryan superintendent at Excursion Inlet?

A. I think it was in 1916 and 1917.

Q. You reminded Mr. Ryan of the fact that Mr. Forbes had agreed to take this amount of oil for the years 1915, 1916 and 1917, did you, Mr. McBride? A. Yes, sir.

Q. And he said, "All right"?

A. Yes, sir.

Q. You didn't furnish that amount to him, did you? A. No, sir.

Q. Where is Ryan, do you know?

(Testimony of J. C. McBride.)

A. No; I don't.

Q. You are sure he was superintendent of the Excursion Inlet cannery for the years of 1916 and 1917? A. Yes, sir.

Q. Where was it you had this conversation with him, Mr. McBride? A. Here in Juneau.

Q. How many conversations did you have with him?

A. I don't recall the number of conversations.

Q. Well, when was any particular conversation that you had with him in Juneau?

A. During one of his business trips in here,

Q. You remember what month, what year?

A. No, sir.

Q. You don't remember the month of the year, time nor place that you had any conversations with Mr. Ryan? (No response.) [217]

Q. Don't you know that during these years, 1915, 1916 and 1917, the Pacific-American Fisheries Company had a contract with the Standard Oil Company for its oil? A. No, sir.

Q. You don't know that. That is, you don't know anything about that? A. No, sir.

Q. Do you know a man named Archie Shiels?

A. Yes, sir.

Q. Was Archie Shiels with the Pacific-American Fisheries during the years of 1915, 1916 and 1917?

A. Yes, sir.

Q. In what capacity, do you know?

A. He was assistant to Mr. Forbes, and then when Mr. Forbes died he took Mr. Forbes' place,

(Testimony of J. C. McBride.)¹

which made him the general manager of the company.

Q. In fact, he took the position of general manager of the business of the Pacific-American Fisheries Company in Alaska and succeeded Mr. Forbes.

A. Yes, sir.

Q. After Forbes' death? A. Yes, sir.

Q. And Mr. Shiels is still with the Pacific-American Fisheries Company, isn't he?

A. He is now the manager of the whole company, He's advanced since then, too.

Q. Was Mr. Shiels, during the years 1915, 1916 and 1917, in the office of the company at Bellingham, where his headquarters is, or was he up here?

A. His office was in Bellingham. [218]

Q. Mr. Shiels, during those years, had charge of the clerical work, contract business, and so forth, to a large extent, of the Pacific-American Fisheries, didn't he?

A. I don't know what his business was.

Q. You don't know in what capacity he acted in. Did you ever have any conversation with Mr. Shiels after he succeeded Mr. Forbes, concerning the furnishing of the Pacific-American Fisheries with any oil? A. No, sir.

Q. This oil, Mr. McBride, that you speak of here, as refined oil for the years 1915 and 1916, do you mean that that was the cheap grade of oil, being ten cents a gallon during 1915?

A. Distillate; yes, sir.

(Testimony of J. C. McBride.)

Q. That was about the cheapest grade, wasn't it, of what you term—

A. (Interrupting.) That's the cheapest refined oil—distillate.

Q. The next item in the bill of particulars is James Davis, in which you claim that you were to furnish him, during the years 1915, 1916 and 1917, a certain amount of refined oil and a certain amount of lubricating oil. Do you remember the amounts there without examining the bill of particulars? Or don't you?

A. It's fifteen thousand gallons.

Q. What kind? A. Of refined oil.

Q. How much lubricating oil? A. 750 gallons.

Q. What conversation did you have, if any, with Mr. Davis about this matter of furnishing oil?

A. It was a conversation to sell him oils. [219]

Q. What year was it that he told you that he would take this amount of oil from you?

A. 1915.

Q. What time in 1915?

A. In the early part of the year.

Q. You know what month, Mr. McBride?

A. No, sir.

Q. Couldn't tell whether it was January, February, March, April or May? A. No, sir.

Q. Where was Mr. Davis at the time that you had this conversation with him?

A. I don't know just the exact place.

Q. Did you just have one conversation with him

(Testimony of J. C. McBride.)¹

about the amount of oil that you were to furnish him—

A. (Interrupting.) No; I talked to him—

Q. (Continuing.) For these three years?

A. I talked to him several times about it.

Q. You remember how many times?

A. No, sir.

Q. How did it come, Mr. McBride, that, for instance, Davis, the Taku Canning and Cold Storage Company, the Chichagoff Mining Co., the Hoonah Packing Co. and the National Independent Fisheries Company, the Pacific-American Fisheries Company, that they were to have a given quantity of lubricating oil and a given quantity of refined oil for each of the years of 1915, 1916 and 1917?

A. I don't know how they arrived at that, Judge.

Q. What boat or boats did each of those have in 1915, 1916 and 1917—no; what boat did James Davis have? [220]

A. He run the mail boat.

Q. What mail boat? A. The "Estebeth."

Q. In those years?

A. No; he had the, the one before, I have forgotten the name of the boat he had before the "Estebeth."

Q. You forget the name of the boat. Where did he run it? A. Out of Juneau.

Q. From where to where and return?

A. Skagway and Sitka.

Q. You forgot the name of the boat?

A. I don't recall it just this minute.

(Testimony of J. C. McBride.)

Q. Were you ever present personally, yourself, when James Davis called for oil himself and you couldn't furnish him with any oil?

A. On our dock?

Q. I said, were you ever personally present when he called with his boat during either the years 1915, 1916 or 1917, when he called for oil, with his boat, at your dock and couldn't get it? A. No, sir.

Q. You don't know of your own personal knowledge of any amount of oil that James Davis called to get from the Union Oil Company that he didn't get, during either one of those years, do you?

A. It was reported to me that he called.

Q. Oh; it was reported to you. Mr. McBride, do you think it is possible for you or any one else, to have, in 1914 or in 1915, to have made an estimate as to just how much oil the Hoonah Packing Co. at Hoonah or at Gambier Bay, or the Taku [221] Canning & Cold Storage Co., or the Chichagoff Mining Co., or the Auk Bay Salmon Company or the National Independent Fisheries would need for either one of those years?

A. You mean, could I make it?

Q. Yes. A. No.

Q. Well, do you think it is possible for cannerymen to make that estimation as to how much oil they would need for two years ahead, or three years ahead? A. Yes, sir.

Q. You think it is? A. Yes, sir.

Q. You think that a canneryman would know

(Testimony of J. C. McBride.)

now three years from to-day just what oil he was going to use in 1916, do you, at a cannery in Alaska?

A. Yes, sir.

The COURT.—In 1916?

Q. 1926. Do these canneries, and have they been, to your knowledge extending over any length of time, running the same crew of men and the same boats, burning the same amount of oil and catching the same amount of fish each year?

A. I don't know that catching the same amount of fish or running the same crew would come into it, Judge. They might spend the same amount on oil and not get half the fish.

Q. But you say that you couldn't, or do you know whether a canneryman could estimate three years ahead of time as to how much oil he was going to use the third year? A. I think he could.

Q. You think he could? A. Yes, sir. [222]

Q. How many of these canneries, Mr. McBride, have gone out of business and gone into bankruptcy, to your knowledge, inside of the first year or the second year that they have ever done business?

Mr. FAULKNER.—Just a minute. We object to that as incompetent, irrelevant and immaterial and not cross-examination. We're running off into a field not covered by the pleadings now.

Judge WINN.—Getting at this to show the unreasonableness of it.

Mr. FAULKNER.—Well, it's getting at the estimate in an argumentative way. I think it is rather arguing with the witness.

(Testimony of J. C. McBride.)

The COURT.—He may answer.

(Question repeated by reporter.)

A. That is the question you asked me when you asked me if they could determine the number of gallons they could use three years ahead. You asked me if they are in operation three years hence how many gallons they could use?

Q. What I want to find out, Mr. McBride, is can any one of these canneries, with any degree of certainty, estimate as to whether or not they would be running three years hence from any particular day.

Mr. FAULKNER.—I object to that as purely argumentative.

The COURT.—Objection sustained.

Q. Isn't it a fact, Mr. McBride, that during the war and during the years of 1916 and 1917, that the canneries cut down their packs and cut down the boats that they were using, and that some ran at about half and some a third capacity of what they had been running before? Don't you know that [223] to be a fact?

A. No, sir; I don't. They fished harder than they ever fished before.

Q. Don't you know that the canneries, on account of war time prices and the lack of catch, most all of them now are pretty hard up financially, and that a lot of them have gone out of business, and during the years 1916 and 1917, went out of business?

Mr. FAULKNER.—I object to that as argumentative and not cross-examination.

(Testimony of J. C. McBride.)

The COURT.—Objection sustained.

Q. Do you want to say that the Hoonah Packing Co., the Taku cannery, the Auk Bay cannery, the Pacific-American Fisheries and so on, at their respective locations, that you have testified to, run the same number of boats, used the same amount of gasoline or wouldn't have used the same amount of gasoline for each of the years of 1915, 1916 and 1917?

Q. I'm not saying what those canneries used. In my bill of particulars, I'm stating what these gentlemen agreed to give me orders for. I'm not stating—

Q. (Interrupting.) You don't know whether they would need it or not and that didn't concern you, whether they ran at the same capacity and so on, or how much oil they needed, except what they told you? A. No; I didn't know, but they—

Q. (Interrupting.) Now, Mr. McBride, don't you know that during the years 1916 and 1917 that the canneries did not run at full blast and did not use the same amount of gasoline and oil that they did, say, in 1914? [224]

A. I think that they fished harder then than they ever did in their life.

Q. You think they had more boats and more men during those years? A. Yes.

Q. Huh?

A. No; I won't say about the number of men and boats. I think, perhaps that they made further runs.

Q. You don't know whether they did or not?

(Testimony of J. C. McBride.)

A. I don't know a thing about their business.

Q. Were you up here much during the years 1915, 1916 and 1917?

A. Yes, sir; I was here all the time.

Q. Do you pretend to state to the jury and to the Court that you didn't know the condition of affairs of these canneries that you set forth in your bill of particulars, as to how they were outfitting for business during those years?

A. I have just stated in my bill of particulars what they told me.

Q. Do you know of your own personal knowledge that they were running at the same capacity and the same boats and the same number of men during those years, 1915, 1916 and 1917?

A. No, sir; I do not.

Q. As a matter of fact you know that they were not, don't you, Jack? A. No; I don't.

Q. Didn't you keep up with that industry in Alaska here, when you were selling them oil, hardware and so forth, any better than that?

(No response.)

Q. This amount that you were to furnish James Davis, 15,000 [225] gallons a year, that I have mentioned, of one kind of oil and 750 of the other kind, was that to constitute his entire requirements for those years?

A. That I couldn't tell you.

Q. Did he come to you and tell you that if you had that oil he would take it?

A. I went to him to solicit his business.

(Testimony of J. C. McBride.)

Q. The personal solicitation took place in 1914?

A. I think it was in 1915. He was here all the time.

Q. You don't know what time in that year?

A. No; I do not.

Q. Well, here's Hunter & Dickinson, you have got the same number of gallons of refined oil, 5,000 gallons, for each of those years, 1915, 1916 and 1917, and 250 gallons of lubricating oil for the same years, the same amount. Was Hunter & Dickinson running the same gasoline boats each one of those years?

A. I don't recall. They had two or three boats. I don't recall just how many they had.

Q. What did they run in 1915, do you know?

A. I do not.

Q. In 1916? A. No, sir.

Q. 1917? A. No, sir.

Q. Don't you know that they did change boats and didn't run the same boats in any two out of those three years? A. No; I don't.

Q. Notwithstanding that, they came to you and told you that they wanted these amounts of oil for those years? [226]

A. No; I solicited that business.

Q. Well, you went to them and then they told you that they wanted that amount? A. Yes, sir.

Q. Contracted three years ahead of time, did they? A. Yes, sir.

Q. And now the launch "Rolfe." You have 2,000 gallons for each of the years 1915, 1916 and

(Testimony of J. C. McBride.)

1917 of refined oil and a hundred gallons for each of those same years of lubricating oil. With whom did you have a conversation concerning the furnishing of this oil to the launch "Rolfe"?

A. Oswald Olson.

Q. Where is he? A. He is here in Alaska.

Q. Here in Alaska. Is he in town?

A. No; he may be in Ketchikan.

Q. Hunter and Dickinson are in town, are they?

A. Yes, sir. My conversation was with Earle Hunter.

Q. You are sure that this man that you speak of, Olson, the owner of the launch "Rolfe," ran and operated that boat during the years of 1915, 1916 and 1917? A. Did he run it? Yes, sir.

Q. Those three years? A. Yes, sir.

Q. Where did she run?

A. She fished between Ketchikan and the deep sea fisheries.

Q. Where is the deep sea fisheries?

A. In the Gulf of Alaska. And came in here many trips via Juneau.

Q. He would come in here on some of his trips?
[227]

A. Yes, and sold fish here, too.

Q. Are you sure they fished those three years? A. Yes, sir.

Q. You think he is here in town now—the owner of the "Rolfe"?

A. No; I think he is in Ketchikan.

(Testimony of J. C. McBride.)

Q. He was fishing and furnishing his boat out near Ketchikan?

A. I don't know where he furnished it down there.

Q. So Olson told you— In what year was it that you had this conversation with him? A. 1915.

Q. He told you in 1915 that he was going to need these respective amounts of oil?

A. That he would take that much oil from me; yes, sir.

Q. And he contracted three years ahead of time?

A. Yes, sir.

Q. You considered that a good, profitable contract, did you?

A. Why, yes, in the aggregate, if I could furnish the oil; yes, sir.

Q. Well, all these agreements, contracts or promises of whatever nature, whatever you may term them, they're all oral, that you had with these parties; all oral,—James Davis, Hunter & Dickinson and the man on the "Rolfe"?

A. Yes; those were oral; yes, sir.

Q. Now, comes the launch "Tillicum." How much did she want in the years 1915, 1916 and 1917?

A. A thousand gallons.

Q. Who was the owner of her?

A. James Christoe.

Q. With whom did you have a conversation about furnishing her with gas and so forth for each of the years 1915, 1916 and 1917? [228]

A. Mr. Christoe.

(Testimony of J. C. McBride.)

Q. Jim Christoe. He came to you or did you go to him? A. I solicited his business.

Q. When did he tell you this?

A. Oh, it was here in town.

Q. When? A. Oh, when?

Q. Yes. A. 1915.

Q. How? A. In 1915.

Q. What time in 1915?

A. Early in the spring.

Q. What month, do you remember? A. No, sir.

Q. Jim Christoe was the owner of the boat "Tillacum"? A. Yes, sir.

Q. He is over at Douglas now, isn't he?

A. Yes, sir.

Q. In the Territorial Bank there? A. Yes, sir.

Q. You just had this one conversation with him about furnishing him with refined and lubricating oils for the year of 1915? A. Yes.

Q. And in 1916 and 1917. Just the one conversation. So he calculated three years ahead of time, did he? A. Yes, sir.

Q. Now comes the "Anita Phillips." Who owned her during the years of 1915 and 1916?

A. Jack Rowe. [229]

Q. And 1917. Jack who? A. Rowe.

Q. When did you have any conversation with Jack Rowe about furnishing her with refined or lubricating oils? A. 1915.

Q. When and where?

A. I don't know what month. Here in Juneau.

Q. Don't remember the month. Did he own the

(Testimony of J. C. McBride.)

“Anita Phillips” for all those three years, 1915, 1916 and 1917?

A. I don't know that he owned her. He run her.

Q. You are sure he run her for those three years?

A. Yes, sir.

Q. How is that? A. Yes, sir.

Q. Did you solicit his business or did he come to you? A. I solicited his business.

Q. And he said, “All right, Jack, I'll take this amount of oil”? A. Yes, sir.

Q. For the next three years? A. Yes, sir.

Q. How much oil was it, do you remember that without looking at the bill of particulars?

A. Well, I don't know. I don't just remember how much it was.

Q. Had no memoranda made in your office, did you?

A. In the office of C. W. Young Company? No.

Q. You did remember it when you made up the bill of particulars, didn't you? A. Yes, sir.

[230]

Q. In 1922. But now, can't you tell the month that you agreed to furnish him?

A. I just read it a moment ago. Right at this minute, I don't remember the month; no, sir.

Q. Well, here's Pete Madsen, for the years of 1915, 1916 and 1917, did you furnish a certain amount—that is, you say you agreed to furnish a certain amount of refined and lubricating oils to him, amounting to the same amount each year, 1915, 1916 and 1917. A. Yes, sir.

(Testimony of J. C. McBride.)

Q. Where did you have any conversation with Pete about this? A. Here in Juneau.

Q. When was that? A. That was in 1915.

Q. What time in 1915?

A. Early in the spring.

Q. What month?

A. I couldn't tell you the month.

Q. Early in the spring. Now, Pete owned the gasoline boat "Hegg," didn't he?

A. I believe it was the "Hegg"; yes, sir.

Q. So he calculated that he would need how much oil for each one of those years, refined oil, do you remember without looking at the bill of particulars?

A. I don't remember right now; no, sir.

Q. Well, you have it in your bill of particulars that he was to have 3,000 gallons for each one of those years of one kind— A. No; 2,500 gallons.

Q. 2,500 gallons for each of the years 1915, 1916 and 1917 of [231] refined oil, and in each one of those years 125 gallons of lubricating oil. So Pete estimated here, for three years ahead, that he would need that much of those kinds of products, did he?

A. Yes, sir.

Q. The next is the "Morangen." Do you remember, Jack, without looking at the bill of particulars, what your sales were to be or what your conversation was as to the amount of gallons that anybody agreed to take for that gasoline boat?

A. No, I don't, right this minute.

(Testimony of J. C. McBride.)

Q. Who was the man that you had your conversation with on that? A. Pete Fleming.

Q. Who? A. Pete Flemming.

Q. Where is Pete? A. I think he is in Juneau.

Q. Then Pete estimated ahead for three years and wanted an exact amount of gasoline and lubricating oils for each of those three years, did he?

A. I don't know that he estimated it. That is what he told me; what business he would do with me.

Q. Well, he said he would take that much?

A. Yes, sir.

Q. Of oil. A. Yes, sir.

Q. The "Gypsy," who owned her?

A. I don't remember the Captain's name.

Q. You remember the amount that you claimed you could furnish the "Gypsy"?

A. Oh, a couple of hundred gallons. [232]

Q. Yes; and ten gallons each of the lubricating oil for each of the years of 1915, 1916 and 1917. Do you know the man?

A. I can't recall the captain's name right now.

Q. Where was it you had this conversation?

A. Here in Juneau.

Q. In 1915? A. Yes, sir.

Q. Do you remember what time in 1915?

A. Early in the spring.

Q. You don't remember the month?

A. No, I don't.

Q. You don't know whether it was January, February or March. A. No, sir.

(Testimony of J. C. McBride.)

Q. His conversation with you was that he would take the same amount of each one of those oils for each one of those respective years that I have mentioned? A. Yes, sir.

Q. The launch "Pacific," was that owned by Tibbits? A. Yes, sir.

Q. During those years. You remember, without looking at the bill of particulars, the amount of refined oil and the amount of lubricating oil that you were to furnish each one of those years?

A. No, I don't right offhand.

Q. Where was Tibbits when you had this conversation with him? A. In Juneau.

Q. At what place, do you remember?

A. No, I don't.

Q. What did he say to you and what did you say to him?

A. He said that he would take that number of gallons of oil. [233]

Q. Just had the one conversation?

A. I think I had several with the captain.

Q. Well, in the first conversation did he define the amount that he wanted for each one of those three years, or did you take all the conversations together to arrive at the conclusion that you set forth in the bill of particulars to the effect that he wanted 5,000 gallons for each one of the years of one kind and 250 of the other kind? Was it one conversation or two that you had?

A. Of course, it was the last conversation that he told me in.

Q. The last one? A. Yes.

(Testimony of J. C. McBride.)

Q. When was the last one? A. I don't know.

Q. Do you know what year? A. 1915.

Q. What time?

A. I don't know what time of the year.

Q. Do you know what month? A. No.

Q. Well, the next two are the launch "Olga" and the launch "Orien"; do you remember the respective amounts of oil that you were to furnish them during the years of 1915, 1916 and 1917?

A. No; and I don't recall the captain's name right now.

Q. Do you remember the amount of oil that each of those boats was to get now? A. No.

Q. You don't remember the captains of either the launch "Olga" or the "Orien"?

A. Not right now; no. [234]

Q. Where was it that you had the conversation with the captain of the "Olga"? A. In Juneau.

Q. You don't remember who it was?

A. No, I don't.

Q. That conversation was in 1915?

A. Yes, sir.

Q. In which part of the year?

A. Early in the year.

Q. How? A. Early in the year.

Q. As early as January, or February of the year, was it?

A. No, I don't think it was that early. It might have been in March.

Q. It might have been in March, 1915?

A. Yes, sir.

(Testimony of J. C. McBride.)

Q. With the man on the "Olga" you just had one conversation?

A. Yes, sir; one conversation with him.

Q. What sort of looking man was he?

A. I don't remember the captain's name right now.

Q. What size of man, what age, do you remember that now? A. I couldn't tell you that now.

Q. Do you remember what place it was you had this conversation? A. No.

Q. Don't you remember anything about it? Did you make the same answer in regard to the launch "Orien"? A. Yes, sir.

Q. Because you have got the same amount, 2,500 gallons of refined oil and the same amount of lubricating oil? A. Yes, sir. [235]

Q. You don't remember who the captain was on that? A. No, sir.

Q. You don't remember how he looked?

A. No, sir.

Q. You remember the place you had the conversation with him? A. No.

Q. Where did that boat run to?

A. It was a fishing boat out of here.

Q. Was the "Olga" also a fishing boat? —

A. Yes, sir.

Q. Do you know of your own knowledge if those two boats remained here during the years 1915, 1916 and 1917? A. Yes, sir.

Q. You know if the same captain remained captain of them?

A. I don't know that, but this boat was here.

(Testimony of J. C. McBride.)

Q. Of course the records in your office down there would show? A. Yes, sir.

Q. Whether they remained here or not and who owned them.

A. Yes, sir; gives the captain's name, the owner's name and everything.

Q. Do you remember of your own personal knowledge, Jack, as to those boats remaining here at Juneau; that is, those two large boats just mentioned, or did you ascertain from examining the records in your office?

A. I remember their being here as fishing boats.

Q. There is another launch, called the "Carita."

A. "Carita."

Q. Do you remember, without looking at your bill of particulars, how much you were to furnish her of refined oil and how much of lubricating oil for the years 1915, 1916 and 1917? [236]

A. Well, she was quite a size boat. No; I don't remember. Some 4,000 gallons probably, or about that.

Q. Who was the captain during those years, Jack?

A. She belonged to the lumber company here.

Q. Belonged to the sawmill? A. Yes, sir.

Q. Who did you talk with? A. Mr. Worthen.

Q. Mr. Worthen; who was he?

A. He was the manager and owner.

Q. Of the sawmill? A. Yes, sir.

Q. He's dead, isn't he? A. Yes.

Q. Do you know when he died?

A. No, I don't.

(Testimony of J. C. McBride.)

Q. You had this conversation with Worthen in what year? A. 1915.

Q. When and where?

A. In Juneau, in the early part of the year.

Q. You don't remember the month?

A. No, sir.

Q. So he told you that if you could furnish him with this kind of oil for those three years, he would take that amount from you? A. Yes, sir.

Q. Contracted for three years? A. Yes, sir.

Q. This conversation was for the three years' requirements? A. Yes. [237]

Q. Sawmill has been a kind of an up-and-down business, running some time full blast and sometimes closing. Hasn't been a regular, going concern, or wasn't, during 1915, 1916 and 1917?

A. I think they run continually during the summer time.

Q. Sure of that? A. Yes, sir.

Q. While Worthen was there? A. Yes, sir.

Q. Those three years? A. Yes, sir.

Q. Scandinavian Grocery. What were they engaged in, the grocery business here?

A. Grocery business; yes, sir.

Q. With whom did you have any conversation concerning the furnishing of that concern?

A. The owner; Mr. Randall.

Q. When did you have that conversation, Jack?

A. In 1915 or 1916.

Q. 1915, did you say? A. And 1916.

(Testimony of J. C. McBride.)

Q. Do you remember that it was both of those years? A. Yes, sir.

Q. Do you remember without looking at the bill of particulars how much oil you were to furnish him?

A. I think in 1915 there was 15,000 gallons and in 1916 they gave me an order for 61,000 gallons.

Q. What do you mean by giving you an order?

A. They sent me an order.

Q. Written order? A. Yes, sir. [238]

Q. Is that one of the papers that have been offered in this case? A. Yes.

Q. Defendant's Exhibit "P." Who signed that order, Jack? A. Randall.

Q. Is there any other name there?

A. Scandinavian Grocery.

Q. Do you remember the date that that was deposited in your office?

A. No; I don't remember the exact date.

Q. I see on this exhibit that it is marked "Copy." What does that mean? A. Where?

Q. Over there (indicating) in that corner. It's marked copy.

A. I don't know. It is no doings of mine.

Q. When do you first remember having seen that?

A. Well, the date is on it; January, 1916.

Q. Well, I know the date is on it, but when do you remember having received it at the office of the C. W. Young Company?

A. During that month.

(Testimony of J. C. McBride.)

Q. This was January, 1916. You didn't take any pains to look this up until you went to make up the bill of particulars in this case in 1922, and then you looked it up and found this order?

A. Yes, sir.

Q. How much of the oil here did the Scandinavian Grocery Company get under this order?

A. Didn't get any.

Q. You never saw this order signed?

A. No, sir. [239]

Q. When was the first time you ever saw it in your office, in the office of the C. W. Young Company? A. In January, 1916.

Q. You remember it that far, do you?

A. What is that?

Q. You remember seeing this before. You remember it back that far?

A. It is dated then; it must be since then.

Q. But personally you don't remember having seen it in your office until you went out to make your bill of particulars?

A. Yes; I remember the order.

Q. You remember the order? A. Yes, sir.

Q. You remember the details of the C. W. Young Company's business that well during that period so you can remember a particular order given in 1916?

A. Well, if that's— That is not particularly a detail matter; that's a nice order.

Q. Well, you was seeing a whole lot of orders during those years—

A. (Interposing.) Yes, sir.

(Testimony of J. C. McBride.)

Q. (Continuing.) Weren't you, for gasoline?

A. Yes, sir.

Q. This is witnessed by a man named Wolfe. Who is Wolfe, do you know?

A. He is a representative of the Union Oil Company.

Q. Mr. Wolfe was here and procured that order, didn't he, from the Scandinavian Grocery Company?

A. It was on their stationery; yes, sir.

Q. There were some deliveries made under this contract and [240] agreement? A. No, sir.

Q. None at all? A. No, sir.

Q. Let's see. Your bill of particulars states that this was for 1915. Were you to receive cash for it with the order or to sell him on time?

A. This says "Cash."

Q. It was to be for cash?

A. This says "Cash" on there; yes, sir.

Q. You know what time Randle left the country and what time his concern went into bankruptcy down there? A. No, sir; I don't.

Q. He did leave the country, though, and his grocery store went into bankruptcy down there, didn't it?

A. Yes; but I don't know when it was.

Q. You don't know whether or not if you had had the oil here and delivered it, whether he could have paid for it?

A. Well, his order called for cash.

(Testimony of J. C. McBride.)

Q. But you don't know of your own personal knowledge whether he had the cash on hand or not?

Mr. FAULKNER.—Just a minute, we object to that as not proper cross-examination and incompetent, irrelevant and immaterial.

The COURT.—Objection sustained.

Q. Now, in this order here, he says, in one column, "Estimated yearly consumption." What do you understand by that? How much lubricating oil and how much refined oil was to be delivered under that, according to your construction of the order and for what years? It says, "Estimated yearly amount." [241]

A. Well, I would construe this as meaning that he wanted 2500 gallons of gasoline in 1916 and 60,000 gallons of distillate in the same year.

Q. What in the world was he going to do with all that? A. I don't know.

Q. But the column that indicates that, there is nothing there or in the bill itself to indicate that except that that is the "estimated yearly consumption."

A. Wolfe made it out. He evidently knew what he was doing. He was a representative of the Union Oil Company from Seattle. That's one of their salesmen, by the way.

Q. Was Randle running a big gasoline boat, or was he engaged in the grocery business?

A. I don't know.

Q. Wasn't in the fish business, was he?

A. I don't know.

(Testimony of J. C. McBride.)

Q. Never had any boat, to your recollection, did he? A. I don't remember.

Q. If he contracted for any such amount as that, he contracted as a subagent to use it in his grocery store?

A. I don't know. That is the order I got.

Q. And Wolfe brought it to you? A. Yes, sir.

Q. He run the same store down there where the Scandinavian Grocery Store is there now, down this side of the sawmill, about at the City Dock, didn't he?

A. I don't know where his store was right now. Didn't he have two?

Q. You do know, Jack, that he wasn't in the gasoline boat business, though, don't you, during either 1915, 1916 or 1917? [242]

A. Not that I know of.

Q. He didn't have any gasoline boat to your knowledge? A. Not to my knowledge; no.

Q. No. Well, the next one is the launch "El Nido," for three years. You remember, without looking at the bill of particulars what amount of refined oil she was to take for 1915, 1916 and 1917 and what amount she was to have of lubricating oil for the same years?

A. I don't remember that offhand.

Q. Well, with whom did you have a conversation about furnishing her the amount—it's 1500 gallons of refined oil for each of those years, and 75 gallons of lubricating oil for each of those years.

(Testimony of J. C. McBride.)

Whom did you have any conversation with about that, Jack? A. A man by the name of Dodd.

Q. D-o-d-d (spells)? A. Yes.

Q. Who was Dodd?

A. He was the operator of the boat.

Q. Who owned it?

A. I don't know who owned it?

Q. Where was the boat being operated?

A. In the channel, around southeastern Alaska.

Q. Belonged to a cannery, didn't she? A. No.

Q. Don't you know that she belonged to the Lisianski Packing Company out here, where Cann's mines are?

A. Yes; she did later. I know that.

Q. Whom did she belong to in 1915, 1916 and 1917? A. I don't know the owner's name.

Q. You know that Dodd was the owner of her for those three years. [243]

A. He was operating her.

Q. For those three years? A. Yes, sir.

Q. For whom?

A. I don't know who owned her.

Q. You don't know whether she was engaged in the fish business independently or engaged in the fish business for some cannery.

A. No; I don't.

Q. You know where Little Port Walter and Big Port Walter are, don't you? A. Yes.

Q. Well, the Lisianski Packing Company had a cannery out up near those two places, did they not?

A. A cannery there?

(Testimony of J. C. McBride.)

Q. Yes; the Lisianski Packing Co.?

A. No; I don't know.

Q. Where did you have this conversation with Dodd? A. Here in Juneau.

Q. When? A. In 1915.

Q. And the conversation was to the effect that if you had the oil, he would take this amount of oil from you for those three years? A. Yes, sir.

Q. You don't know whether he was the owner of the boat or had any right to contract for her, or whatever become of Dodd, do you? A. No, sir.

Q. You know where that gas boat is now? [244]

A. She is in southeastern Alaska.

Q. Cann owns her, doesn't he?

A. I don't know.

Q. The Captain Cann I spoke of, owning the mines over on the Chichagoff Island?

A. I don't know.

Q. You don't know anything about her. You don't know that she belonged to the Lisianski Packing Co.? A. No, sir.

Q. And that Cann got her off of the Lisianski Packing Company? A. No, sir.

Q. You don't know anything about it?

A. No, sir.

Q. Jack Campbell owned the "Chlopeck"?

A. Yes, sir.

Q. Where did you have this conversation with Jack about furnishing refined oils and lubricating oils for 1915, 1916 and 1917? A. In Juneau.

(Testimony of J. C. McBride.)

Q. Where was Jack operating this craft during those years?

A. Well, he run her all over—just wherever he had a contract—Lituya Bay and southeastern Alaska.

Q. Kind of Jack the Tar, sea rover? A. Yes.

Q. During those years, how much of the time was he in Juneau, do you remember?

A. Well, he was in every once in a while.

Q. The amount that was to be furnished to him, according to your bill of particulars here, was 2500 gallons of refined oil [245] for each of the years 1915, 1916 and 1917, and 125 gallons for each of the same years of lubricating oil. What time was it you had any conversation with Jack?

A. 1915.

Q. That he was to take this amount of oil for those three years. A. Yes.

Q. Where? A. In Juneau.

Q. Do you remember the place?

A. And probably in the store again. He was in there, in the office.

Q. You don't remember particularly where you met him? A. No, sir.

Q. You don't remember the month?

A. No, sir.

Q. You solicited his business, and he said yes, if you had the oil he would take it from you?

A. Yes; he was always on the gridiron, down on the dock, repairing the boat when he was in.

(Testimony of J. C. McBride.)

Q. The "Chlopeck" passed most of her time on the gridiron, didn't she, Jack?

A. Yes; most of the time.

Q. She is an old scow, made over into a boat, that belonged down at Petersburg, to the Pacific-American—no, the O—— Canning Company down there. You know that old darn craft.

A. I don't know that she was made out of an old scow. I know that she is an old boat.

Q. In 1915 you couldn't hardly tell whether she would last three years or not, could you, Jack?

A. That, of course, was for Campbell to decide. He still has her. [246]

Q. So he contracted three years ahead of time for the same identical amount?

A. He said he would take that amount of oil if I would deliver it to him.

Q. Part of the time he was away out at Lituya Bay? A. Yes, sir.

Q. Did you know his brother, Captain Campbell?

A. Very well.

Q. Captain Campbell was on the "Chlopeck" with him? A. At one time; yes.

Q. Well, he and the captain owned the "Chlopeck" together, didn't they?

A. I don't know just about the ownership of it.

Q. Don't you know that during the years of 1915, 1916 and 1917, that they were out most of the time—away out in or near Lituya Bay, away up the coast, between here and Cordova?

(Testimony of J. C. McBride.)

A. I know they would run once in a while to Lituya Bay.

Q. You don't know whether it stayed out there for a whole year, once, do you, Jack?

A. No, sir.

Q. You don't know anything about her capacity or about how much oil she could take on at a time?

A. In her tanks?

Q. Yes, sir. A. No, sir.

Q. Was that oil all to be furnished at one time or in dribbles? A. Whenever he needed it.

Q. You didn't furnish any of it? A. No, sir.

Q. Mike Koski. You got him on the launch "Caesar"? [247] A. Yes, sir.

Q. You got him marked down here for 1500 gallons for each year of 1915, 1916 and 1917 for refined oil and for 75 gallons for each one of those years of lubricating oils. A. I suppose so.

Q. Where is Mike?

A. He is in Juneau, I think; lives here.

Q. Did he own the gas boat "Caesar" during those years?

A. I don't know if he owned it or not. He was operating her, I know that.

Q. Do you know whether he still continued to operate her in fifteen, sixteen and seventeen?

A. Yes, sir.

Q. You solicited his business and he told you yes, if you could furnish him oil, he would do it?

A. Yes, sir.

(Testimony of J. C. McBride.)

Q. He contracted for three years, did he?

A. Yes, sir.

Q. What is that (indicating), Rom or Ramm?

A. Ramm.

Q. Of the launch "Dolphin." How much do you remember was it that he was going to take?

A. I don't remember right now.

Q. Well, you have here in the bill of particulars, 3,000 gallons for 1915 and 3500 for each of the years 1916 and 1917, of refined oil, and 115 gallons of lubricating oil for 1915 and 175 gallons for each of the years of 1916 and 1917. You had that conversation with him about it, did you?

A. Yes, sir.

Q. In 1915? [248] A. Yes, sir.

Q. You remember what part of the year?

A. Early part.

Q. Do you remember what month? A. No, sir.

Q. He contracted or agreed to take that amount three years ahead, providing you had the oil for him?

A. Yes, sir.

Q. Who was at the head of the Pillar Bay Packing Company—that's the next one on the list—you remember who was at the head of that company during 19— A. (Interposing.) Mr. McHugh.

Q. You only have one year here? A. Yes, sir.

Q. 1916. You have 1650 gallons of refined oil. The lubricating oil is figured down to a fraction—82½ gallons. I think it is a half—a fraction anyway. With whom did you have that conversation?

(Testimony of J. C. McBride.)

A. I had an order for that.

Q. Huh? A. I had an order for that.

Q. Have you the order here? From whom did you have the order? A. From Mr.—

Q. (Interrupting.) Do you know who was at the head of the Pillar Bay Packing Company?

A. At that time?

Q. Yes. A. Mr. McHugh.

Q. Now, that is not the McCue that is with the Northwestern Fisheries Company? [249]

A. No, sir.

Q. Who used to be in partnership with McCormick at Wrangell. A. Yes.

Q. And their cannery is off from Wrangell somewhere. A. It's over on Kuiu Island.

Q. Yes. A. At the lower end.

Q. Yes; I have been there. Where did you have this conversation?

A. It was in the winter, I think I got that.

Q. An order? A. Yes.

Q. This isn't an order. If you have an order I fail to find it here.

The COURT.—Well, ask him if that is what he refers to.

Q. Is that it (handing paper to witness)?

A. This is the letter I wrote the Union Oil Company. That is not the order.

The COURT.—Has it been offered in evidence?

Mr. FAULKNER.—No; there was no order offered in evidence.

(Testimony of J. C. McBride.)

Q. Is this the paper that you had reference to as an order from that outfit?

A. No; that's an order. Oh, this is the letter, I wrote; yes.

Q. This is a letter that you wrote down to the Union Oil Company, is it? A. Yes.

Q. What do you mean by order? Was it in writing or oral?

A. Yes, sir; I had a written order for that.

Q. Where is it?

A. I don't know where it is. [250]

Q. You looked for it?

A. Yes, sir. That is the only memorandum that I can find there. Part of my files are missing.

Q. Do you know who delivered it to you? McHugh didn't deliver it to you personally, did he?

A. No; he didn't.

Q. Do you know who delivered it to you?

A. No, sir; I couldn't say.

Q. You don't know when it was delivered?

A. Not exactly; no.

Q. Well, do you remember in what year?

A. It was in 1916.

Q. You don't remember the month?

A. That letter probably would state.

Q. All that you remember about dates and so forth, is from this exhibit which I have just shown you, which is a letter that you wrote to the Union Oil Company? A. Yes, sir.

Q. You have no personal remembrance of who called on you with this order? A. No.

(Testimony of J. C. McBride.)

Q. Was that contract to extend over the entire year? A. No; it was just an order.

Q. Just simply a straight order? A. Yes, sir.

Q. You have searched the records of the C. W. Young Company's office and books and papers?

A. Yes, sir.

Q. And were unable to find any such written order? A. Yes, sir. [251]

The COURT.—Was the order ever filled?

The WITNESS.—No, sir.

The COURT.—Why?

The WITNESS.—I didn't have the oil.

Q. You don't know what became of the order?

A. No; I don't.

Q. What about the Tenakee Fisheries? Where was that concern located? A. In Tenakee.

Q. That is about what distance from Juneau?

A. Oh, approximately, I don't recall. I'm just trying to think.

Q. Well, let it go. Who was it that ordered this for the Tenakee Fisheries?

A. I don't remember who signed the order. It was from the Tenakee Fisheries.

Q. Did you have an order? A. Yes, sir.

Q. Well, you mean you had an order but it hadn't been offered in evidence?

A. That's all that I find in connection with that order—the letter that I wrote. I had that letter in my files.

Q. That is, this letter that I have just exhibited to you? A. Yes, sir.

Q. That you wrote to the Union Oil Company?

(Testimony of J. C. McBride.)

A. Yes, sir.

Q. If you ever had any written order, what became of it, do you know?

A. I have misplaced it. Most of my files of the Union Oil Company have been misplaced—going back and forth from the [252] oil company to the store.

Q. Do you remember back as far as 1915 and 1916 that there was a written order?

A. I take that order from the letter, Judge.

Q. Well, I know, but Jack, in your exhibit here, “Q,” is there anything to indicate in that letter that you had a written order for this amount of oil?

A. Yes.

Q. What indicates it to you that you had an order?

A. Well, I stated here (reads): “July 25, 1916,” addressed to the Union Oil Company of California, Seattle, Wash., “Gentlemen: In the past week we have had the following orders,” and that’s enumerated as one of them—The Tenakee Fisheries Company.

Q. Yes, but you have testified right along in this case, when Mr. Faulkner would ask you about orders, you said you had orders, right straight along, for a whole lot of matters, but you meant verbal orders, didn’t you? A. No.

Q. When you used the word “order” at any time during your testimony here, had you meant that you had written orders? A. Yes, sir.

Q. At all times?

A. No; part of them are verbal.

(Testimony of J. C. McBride.)

Q. Well, didn't you, when Mr. Faulkner was asking you questions, didn't you in reply state—didn't Mr. Faulkner state to you. Now did you have orders from so and so and you went over this bill of particulars and said, yes, you had orders when you didn't mean anything but these verbal orders? A. I had orders for them. [253]

Q. For all of them? A. Yes, sir.

Q. For all the items as set forth in this bill of particulars, you had orders? A. Yes, sir.

Q. The bill of particulars that you have filed in this case? A. Yes, sir.

Q. Had written orders for them? A. No, sir.

Q. Well, I don't catch you yet. You don't distinguish, then, between the term written and verbal orders. You make no distinction between them?

A. I have explained to you, as I have gone through there about what contracts I had with these different gentlemen.

Q. Yes, but now when Mr. Faulkner asked you, if my memory serves me right, and I think it is true that you went over your bill of particulars, and he asked you if you had any orders for this and that and the other thing and so forth and so on, enumerated the items in this bill of particulars, and in each instance, you said that you had orders for them? A. Yes, sir.

Q. Now, do you want to convey the impression to the Court and jury that you had written orders every time that that question was put to you on each item?

(Testimony of J. C. McBride.)

A. I was asked the question if I had orders, and I said yes.

Q. What do you mean?

A. I said I had those orders.

Q. What do you mean by orders. Do you mean written, verbal or in pen? What do you mean by that? [254]

A. Well, you asked me the question if I had an order, and I said yes. Why don't you ask me what kind—

The COURT.—Well, now here. There is no use arguing over the question. You can make your question so that you can get the proper answer from the witness.

Q. Well, now, Jack, how many written orders and how many verbal orders did you have for these particular items, as set forth in your bill of particulars?

A. Just as I have stated there to every one of those questions, that all those first have been verbal orders and the latter part of them was orders that I had found in going through my files here and there, one or two of them.

Q. But in your testimony you did use the word "order" to mean interchangeable, either written order or verbal order? A. Yes.

Q. That's all I want to know.

A. I'm not trying to make you believe—I'm not trying to avoid the question in any way or trying to fool you at all.

Q. Is there anything on that letter concerning

(Testimony of J. C. McBride.)

lubricating oil for this last, Pillar Bay— No, that's the Tenakee Fisheries? A. No.

Q. Let's see. Pillar Bay, Tenakee and Northwestern Fisheries Company. You state there that you had orders from each one of those companies; but there is nothing said there whether or not you had written or verbal orders, in that letter, is there, Jack? A. Shall I read it?

The COURT.—Well, he asked you—you can read it to yourself. [255]

A. It don't state in this letter whether they were written or verbal.

Q. Do you have any remembrance of it one way or the other?

A. It may be that these were orders that I received by letter.

Q. You can't find any such letter?

A. No; I can't.

Q. You remember those in particular, though, being letters. Now, that includes the items on your bill of particulars here, Jack, so as to get at that matter quick. It includes the items of Pillar Bay Packing Company, Tenakee Fisheries and Northwestern Fisheries, don't it? Look and see so we can get through with it. A. Yes.

Q. There isn't anything said in your letter to the Union Oil Company, which is Defendant's Exhibit "Q" in this case, about anything except so much distillate? There is nothing said about lubricating oil, is there? A. No, sir.

Q. But it does state, in each one of these cases, in your bill of particulars, that the Pillar Bay Com-

(Testimony of J. C. McBride.)

pany was to have—no, that the Tenakee Fisheries was to have 1650 gallons, and the other two companies how much lubricating oil? I just hand you that to refresh your memory.

A. Pillar Bay 1650 and Tenakee 3300.

Q. That is refined oil? A. Refined oil.

Q. How much lubricating?

A. 821½ gallons and 165.

Q. Nothing said in your letter to the Union Oil Company about lubricating oils, is there? [256]

A. No, sir.

Q. Astoria & Puget Sound Canning Company. You have that, Jack, listed here for the years 1915 and 1916, 30,000 gallons of refined oil and 15,000 for each one of those years, 1915 and 1916, 1500 gallons of lubricating oil. Bob Bell was at the head of that cannery, wasn't he? A. Yes, sir.

Q. Where was Bob Bell when you had this agreement with him? A. In Juneau.

Q. What was the nature of the conversation you had with him?

A. I asked him if I could supply him with oil.

Q. And he told you if you had the oil, you could supply him? A. Yes, sir.

Q. That was for the two years, 1915 and 1916?

A. Just what it states?

Q. That's all you have here? A. Yes.

Q. When was the talk you had with him in 1915, do you remember what month? A. No; I don't.

Q. What place?

A. I think that was in Seattle.

(Testimony of J. C. McBride.)

Q. That was what he estimated it would take to run his cannery during those two years?

A. Yes, sir.

Q. George Naud. He's a private individual?

A. Yes, sir.

Q. Was he ordering anything from you as a Government official, or ordering privately?

A. No; just buying fish down at Taku. [257]

Q. He wasn't in a Government position then?

A. No, sir.

Q. Where did you have this conversation with George Naud? A. In the office.

Q. What boat was he running?

A. I don't recall the boat.

Q. Do you remember what year?

A. Nineteen hundred—

Q. Without looking at the bill of particulars?

A. How is that?

Q. Do you remember what year you were to furnish him anything without looking at the bill of particulars? A. No; I don't.

Q. And you don't remember the gallons without looking at the bill of particulars? A. No.

Q. Now, the only order you had with him was this verbal conversation you had with him that he was to take this much oil, is it? A. Yes, sir.

Q. During that year? A. Yes, sir.

Q. Just what year— You got it here?

A. Yes, sir.

Q. 1916; that's all you got here. Oh, it's 1917 instead of 1916. It's my mistake. Now, then, there is another one. Valdez Packing Company,

(Testimony of J. C. McBride.)

19,120 gallons. You remember what year that was in?

A. I don't recall right now. I had orders for those.

Q. Have you offered them in evidence here?

[258] A. No, sir; I have misplaced them.

Q. Misplaced those. Where was the Valdez Packing Company doing business? A. Valdez.

Q. How far is that from Juneau?

A. Oh, 800 or a thousand miles.

Q. You say you had a written order for that and it was lost? A. Yes.

Q. You know by whom it was signed?

A. No; I don't.

Q. You remember what time approximately you received, the C. W. Young Company received it through you? A. No; I don't.

Q. What year?

A. No; I don't just remember the year.

The COURT.—Was there some correspondence with the main company about it?

The WITNESS.—There was about some other oil that they wanted.

The COURT.—Oh, some other oil.

The WITNESS.—Yes.

Q. Well, had the Valdez Packing Company—How do you fix the time that you received any order from them, Jack, did you have anything in your book? A. How is that?

Q. Did you have any entry in the books of the C. W. Young Company or any memorandum?

(Testimony of J. C. McBride.)

A. I had that order when I made up my bill of particulars.

Q. Oh, when you made up this? [259]

A. Yes, sir.

Q. In January, 1922? A. Yes, sir.

Q. What has become of it? A. I don't know.

Q. Who was present when you had the order?

A. Earl and I.

Q. Was all of this to be delivered at one time— 19,320 gallons of refined oil and 966 gallons of lubricating oil?

A. Yes, sir. I have forgotten how many drums; 180-odd drums, as I recall. It will tell you there.

Q. All to be delivered at once? A. Yes, sir.

Q. Icy Straits Packing Company. Who was at the head of that concern? A. Dick Wulzen.

Q. Wulzen. Where was that located?

A. Idaho Inlet.

Q. That was running during the year of— What year was it that you were to furnish oil to them?

A. 1917.

Q. Was that an oral conversation? A. Yes, sir.

Q. With Dick Wulzen himself? A. Yes, sir.

Q. Is that the cannery that Maloney and Hanley were interested in? A. No, sir.

Q. Was it running in 1917, Jack, when you gave— [260]

A. They had— They didn't have a cannery. They had, I understand, six traps that they were running and driving. They had a pile-driver and a couple of boats.

(Testimony of J. C. McBride.)

Q. Who was associated with Wulzen in that, do you know? A. It was Thane.

Q. Bart Thane? A. Yes.

Q. Was that a cash order or a time order, do you remember? A. I don't remember.

Q. Just a verbal conversation? A. Yes, sir.

Q. You and Dick Wulzen are good friends and you just had a conversation?

A. Yes, sir; personal friends.

Q. He said he would need that much oil during that season? A. Yes, sir.

Q. Now, then, you have there, I think it is 30,000, if I read it all, of refined oil and 1500 of lubricating oil. How many gallons are there in a barrel of lubricating oil, do you know?

A. Of lubricating? Q. Yes, sir.

A. Fifty—about fifty gallons that is, in a regular barrel.

Q. And this refined oil was in drums, wasn't it?

A. Yes, sir.

Q. Cannery drums; that is it came in drums?

A. Yes, sir.

Q. Came in drums that was furnished by the Union Oil Company? A. Yes, sir.

Q. This Valdez Packing Company order, which is 19,320 gallons, you say is one order. That is a pretty good-sized order, [261] wasn't it, for oil?

A. Oh, no; not particularly so where they were out.

Q. Large order?

A. Not for out where they were.